

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

SKYLAND HOLDINGS, LLC : Case No.

: 09-03

:

-----:

Wednesday,
February 17, 2010

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 09-03 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
PETER MAY, Commissioner (NPS)

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel
JOHN NYARKU

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
MAXINE BROWN-ROBERTS

The transcript constitutes the
minutes from the Public Hearing held on
February 17, 2010.

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TABLE OF CONTENTS

WELCOME:

Anthony Hood, Chairman 4

PRELIMINARY MATTERS:

Sharon Schellin, Secretary 7

WITNESSES:

Eric Jenkins, Deputy Mayor's Office 8

Kenneth A. Davis, ANC-7B 24

Organizations & persons in support:

Karen Lee Williams, HCCA 48

Villareal Johnson, Washington East
Foundation 55

Eugene Kinlow 59

Julius Ware, Ward 7 Business &
Professional Association 62

Organizations & persons in opposition:

Ronald Mitchell 82

Mary Rose Green 87

Commissioner Robin Hammond-Marlin, ANC 7B. 90

Kimberly Jones 92

Yvonne Bing 94

Fort Baker Drive Presentation:

Martin Sullivan 116

Joe Mehra, Traffic Expert 120

Ronald Cole 133

Gary Puckrein 144

Karen Siebert 152

Cynthia Brock-Smith 161

ADJOURN:

Anthony Hood 229

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P-R-O-C-E-E-D-I-N-G-S

6:30 p.m.

CHAIRMAN HOOD: Okay. Good evening, ladies and gentlemen. This is a Public Hearing of the Zoning Commission of the District of Columbia on Thursday, February 17, 2010. My name is Anthony Hood.

Joining me are Commissioners May and Turnbull. We are also joined by the Office of Zoning staff Ms. Sharon Schellin and Ms. Donna Hanousek. Also the Office of Planning staff under the leadership of Ms. Steingasser and Ms. Brown-Roberts.

Again, just to reiterate, this proceeding is being recorded by a court reporter and is also webcast live.

The subject of this evening's hearing is Zoning Commission Case No. 09-03. This is a request by Skyland Holdings, LLC for approval of a Consolidated PUD and related Map Amendment for property located at Squares 5632, 5633, 5641, 5641-N, and various parcels.

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1 And it is a continuation of our February 4,
2 2010 hearing.

3 Notice of today's hearing was
4 published in the DC Register on October 16,
5 2009, and copies of that announcement are
6 available to my left on the wall near the
7 door.

8 The hearing will be conducted in
9 accordance with provisions of 11 DCMR 3022 as
10 follows: preliminary matters, report of the
11 ANC 7B. Actually, we've done these things.
12 We will be starting with ANC's presentation.

13 Again, organizations and parties
14 in support; party in opposition, Fort Baker
15 Drive; organizations and persons in
16 opposition; rebuttal, and; closing by the
17 applicant.

18 The following time constraints
19 will be maintained in this hearing: Party in
20 opposition, Fort Baker Drive has 60 minutes;
21 organization has 5 minutes, and; individual
22 has 3 minutes.

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1 The Commission intends to adhere
2 to the time limits as strictly as possible in
3 order to hear the case in a reasonable period
4 of time. The Commission reserves the right to
5 change the time limits for presentations if
6 necessary. Note that no time shall be ceded.

7 All persons appearing before the
8 Commission are to fill out two witness cards.

9 These cards are located to my left on the
10 table near the door. Upon coming forward to
11 speak to the Commission, please give both
12 cards to the reporter sitting to my right
13 before taking a seat at the table.

14 When presenting information to the
15 Commission please turn on and speak into the
16 microphone first stating your name and home
17 address. When you are finished speaking
18 please turn your microphone off so that your
19 microphone is no longer picking up sound or
20 background noise.

21 The decision of the Commission in
22 this case must be based exclusively on the

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1 public record. To avoid any appearance of the
2 contrary, the Commission requests that persons
3 present not engage the members of the
4 Commission in conversation during any recess
5 or at any time. The staff will be available
6 throughout the hearing to discuss procedural
7 questions.

8 Please turn off all beepers and
9 cell phones at this time so as to not disrupt
10 these proceedings.

11 Again, I want to apologize for us
12 starting a little late.

13 Would all individuals wishing to
14 testify please rise to take the oath? And
15 even if you were sworn in last time, let's
16 keep it clean; if everyone could rise.

17 Ms. Schellin, could you please
18 administer the oath?

19 (Witnesses sworn.)

20 CHAIRMAN HOOD: Thank you. At
21 this time the Commission will consider any
22 preliminary matters. Does the staff have any

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1 preliminary matters?

2 MS. SCHELLIN: Just that we do
3 have Eric Jenkins here from the Deputy Mayor's
4 Office to testify, if we could take him up
5 first.

6 CHAIRMAN HOOD: Okay. I'm going
7 to ask Mr. Jenkins if he would come forward,
8 and we'll take his presentation at this time.

9 Good evening, Mr. Jenkins.
10 Whenever you're ready. You might want to hit
11 your microphone.

12 MR. JENKINS: Good evening,
13 Chairman Hood and other members of the Zoning
14 Commission. My name is Eric Jenkins,
15 Development Manager in the Office of the
16 Deputy Mayor for Planning and Economic
17 Development.

18 Since March 2009 I've been the
19 project manager for the redevelopment of
20 Skyland, with a brief break from the project
21 for a few months while on detail at another
22 agency. As project manager, I'm responsible

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1 for overseeing all aspects of the Skyland
2 project on behalf of the District.

3 I am pleased to be here tonight on
4 behalf of the Deputy Mayor's Office to testify
5 in support of the PUD application for the
6 Skyland Shopping Center, as well as answer
7 your questions concerning the Deputy Mayor's
8 Office role in this project.

9 The concept of the Skyland project
10 dates back a decade. Over the years that
11 followed, the community has been actively
12 engaged in developing the vision for the
13 Skyland project. Additionally, starting in
14 2002 the Skyland Development Team has fostered
15 a relationship with the community and
16 presented their plan at various community
17 forums for public comment.

18 The Skyland project is geared to
19 promote neighborhood revitalization and
20 economic growth on the 18 acre site located in
21 Ward 7, comprised of those parcels of land
22 bounded to the south by Alabama Avenue SE to

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1 the east, and north by Fort Baker Drive SE and
2 a residential neighborhood along 30th Street
3 SE, and to the west by Naylor Road SE.

4 Today the Skyland Shopping Center
5 is in the C-3-A, R-5-B, R-5-A, and R-1-B
6 Districts. The majority of the property is in
7 the C-3-A District, and the requested map
8 amendment would rezone the R-5-B, R-5-A, and
9 R-1-B Districts to the C-3-A Zone.

10 While the Skyland Shopping Center
11 is still active, a considerable portion of the
12 shopping center is vacant and now contains
13 either underutilized buildings with some
14 buildings boarded up and vacated buildings,
15 which presents serious safety concerns in the
16 neighborhood.

17 The potential of this site is
18 significant. Due to its prominent location at
19 the intersection of Good Hope Road, Naylor
20 Road, and Alabama Avenue the considerable land
21 area available for redevelopment, and the
22 resources and public benefits this project

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1 would provide to the neighborhood.

2 Specifically, the Skyland
3 Development Team's Development Plan calls for
4 approximately 538,000 square feet of
5 residential development or approximately 468
6 units, 448 apartments plus 20 townhomes;
7 315,520 square feet of retail development;
8 1,676 parking spaces.

9 Based on economic analysis
10 conducted on behalf of a developer, the
11 Skyland Development Team estimates the overall
12 project will produce over 1,740 construction
13 jobs and over 690 permanent jobs.

14 The payroll, sales, and real
15 estate tax revenue on the present value of a
16 20 year period is expected to be over \$303
17 million.

18 Additionally, the Skyland
19 Development Team has proposed a Community
20 Benefits Package valued at \$9.2 million.
21 Benefits include for example over \$2 million
22 in traffic and public space improvements, and

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1 a retail tenant build-out subsidy that will
2 benefit local retailers who could otherwise
3 not afford build-out costs.

4 The potential benefits of the
5 Skyland development project to the Ward 7
6 community and the District at large are
7 clearly significant. The economic development
8 and the social and fiscal impact of a project
9 of this magnitude would bestow considerable
10 benefits to the residents of Ward 7, and the
11 residents and visitors to the District in
12 general, and should not be deferred.

13 The Deputy Mayor's Office position
14 is that there should be no undue delay in
15 approving the PUD application and realizing
16 these benefits for the Ward 7 community.

17 Thank you for the opportunity to
18 present testimony on this PUD application and
19 I'll be happy to answer any questions you may
20 have.

21 CHAIRMAN HOOD: Thank you very
22 much, Mr. Jenkins. We appreciate you and the

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1 Deputy Mayor's Office coming down to take the
2 time to let us know where you stand on this
3 particular case. Let's see if we have
4 any questions from any of my colleagues.
5 Okay. We have to do cross-examination, Mr.
6 Tummonds? Okay.

7 Commissioner Richards, do you have
8 any cross-examination? You do? Okay. You
9 can come forward.

10 Mr. Jenkins, you might have a few
11 questions you might have to answer.

12 And I think we have a few, right,
13 Commissioner Richards? I'm not going to start
14 off asking you how many but I'm just trying to
15 get a reference.

16 MR. RICHARDS: I'm going to keep
17 it down to as few as possible.

18 CHAIRMAN HOOD: Can we basically
19 go on his testimony?

20 MR. RICHARDS: Pardon?

21 CHAIRMAN HOOD: You have his
22 testimony, so the questions will be in

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1 response to what he testified to?

2 MR. RICHARDS: Yes.

3 CHAIRMAN HOOD: Okay.

4 MR. RICHARDS: And maybe some
5 things that I thought maybe should have been
6 there but weren't.

7 CHAIRMAN HOOD: No, no. What you
8 can do when you come up -- we want to start
9 and end with this because this is what he
10 testified to.

11 MR. RICHARDS: If I go outside of
12 it, feel free to stop me. I do not intend to
13 go outside of it.

14 CHAIRMAN HOOD: Okay. Thank you
15 for your cooperation.

16 MR. RICHARDS: And no, I do not
17 have that.

18 CHAIRMAN HOOD: Thank you, Mr.
19 Jenkins.

20 Let me do this while you're
21 reviewing that. Mr. Sullivan, do you have a
22 copy of his testimony?

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1 MR. SULLIVAN: No.

2 CHAIRMAN HOOD: Okay. We have
3 another copy and you can review that if you
4 have any cross-examination. If you have any
5 questions.

6 MR. RICHARDS: Mr. Jenkins?

7 MR. JENKINS: Yes.

8 MR. RICHARDS: I wanted to--

9 COMMISSIONER MAY: It's not on.

10 MR. RICHARDS: Is that better?
11 Okay.

12 Just a couple of questions. You
13 spoke about the area of land that's to be
14 rezoned. Are you aware of what the relative
15 values before and after the rezoning of that
16 land is to both the developer and to the city
17 in taxes?

18 MR. JENKINS: No, not
19 specifically. I can get that information in
20 terms of what the tax revenue is today, and
21 provide that to you in terms of what the tax
22 revenue is projected to be. I believe I

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1 testified to that on an annual basis.

2 MR. RICHARDS: Okay. If you
3 would, would you submit that? And then I
4 won't even have to go down that line of
5 questioning.

6 Now, in terms of community
7 benefits, aren't there really two sets of
8 community benefits? There's that set, and we
9 call them community benefits, which are really
10 a part of the offer of the developer to the
11 Zoning Commission as to why this should be a
12 PUD, and what the -- using this as a unitary
13 development is a benefit to the city. That's
14 one set of community benefits, is that
15 correct?

16 MR. JENKINS: Well, what's your
17 second set of community benefits?

18 MR. RICHARDS: I didn't even get
19 to the second yet.

20 MR. JENKINS: Before I answer how
21 they differ, I --

22 MR. RICHARDS: So your answer to

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1 that question is there are two sets and they
2 differ?

3 MR. JENKINS: No. You posed the
4 question that there were two sets. I'm asking
5 -- I don't believe they differ. I believe
6 there's one set of community benefits. I'm
7 asking you if you could just be a little more
8 specific, and what your description is of a
9 second set of community benefits.

10 MR. RICHARDS: Okay. But what I
11 mentioned first was one set, right? That's
12 either a yes or a no.

13 MR. JENKINS: It's inclusive of
14 community benefits.

15 MR. RICHARDS: Okay. So that's
16 included in it?

17 MR. JENKINS: Correct.

18 MR. RICHARDS: Okay. So it's a
19 Venn diagram, that's half of the circle?

20 CHAIRMAN HOOD: Commissioner
21 Richards, I want you to be -- maybe my
22 colleagues might have understood that line of

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1 questioning, because I would have to go with
2 Mr. Jenkins, the second set of amenities.

3 Let's do this; let's try this.
4 Let's ask a question; let's let him answer yes
5 or no. If it's no, then that's the answer.
6 Okay? So maybe that might help us speed up a
7 little more.

8 MR. RICHARDS: Okay. Now, there's
9 also a community benefits which are benefits
10 to enhance the community because of the
11 negative impacts of the project. Is that
12 correct?

13 MR. JENKINS: Let me just give you
14 what I think community benefits are, right?

15 MR. RICHARDS: I think that's a
16 yes or no question, isn't it?

17 CHAIRMAN HOOD: But you asked him
18 a question and you asked him to answer it.
19 What we could do is turn his microphone off,
20 and we could let you ask and then you answer.
21 Let him answer. You want a yes or no; this
22 time he's not going to give you a yes or no.

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1 He wants to go into detail in his response.
2 Let's give him a chance.

3 MR. JENKINS: So community
4 benefits are anything that the developer is
5 not obligated to do that would benefit the
6 community in general. And I think that's the
7 general view of community benefits.

8 Now, those fall in terms of if
9 they benefit the community at large inclusive
10 of the District, or specific neighborhoods, or
11 specific services. All of that is inclusive
12 of community benefits.

13 So community benefits has a very
14 broad and general application. I hope I'm
15 answering your question.

16 MR. RICHARDS: I have no further
17 questions.

18 MR. JENKINS: Thank you.

19 CHAIRMAN HOOD: Thank you. Thank
20 you very much.

21 Commissioner Richards, thank you.

22 Mr. Sullivan, do you have any

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1 questions?

2 MR. SULLIVAN: Thank you. Hello,
3 Mr. Jenkins.

4 MR. JENKINS: Hello.

5 MR. SULLIVAN: You said that there
6 were \$9.2 million in community amenities or
7 public benefits, is that right?

8 MR. JENKINS: Yes. I'm saying the
9 developer has proposed \$9.2 million.

10 MR. SULLIVAN: And you define that
11 as anything that the developer is not
12 obligated to do could be a public benefit? So
13 if they're obligated to do it, it's not a
14 public benefit for purposes of the PUD
15 process, is that right?

16 MR. JENKINS: Yes, yes.

17 MR. SULLIVAN: So of the \$9.2
18 million, the \$5.6 million that is low impact
19 design Green features which DDOE claimed was
20 as required, isn't the developer obligated to
21 spend those funds?

22 MR. JENKINS: I haven't seen that.

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1 I don't have access to that.

2 MR. SULLIVAN: If they were
3 required, if they were already an obligation
4 for a typical project?

5 MR. JENKINS: I'll stand by the
6 testimony that I gave.

7 MR. SULLIVAN: Okay. So if they
8 were obligated to do that otherwise, then it
9 wouldn't be a benefit?

10 MR. JENKINS: I'll stand by the
11 testimony that I gave.

12 MR. SULLIVAN: Okay. I guess
13 you've answered my question.

14 CHAIRMAN HOOD: Don't look at me,
15 I don't have the answer for you.

16 MR. SULLIVAN: No, I --

17 CHAIRMAN HOOD: He's already said
18 he's going to stand by his testimony.

19 MR. SULLIVAN: Okay. Okay. Got
20 it.

21 Were you aware that \$250,000 of
22 the \$9.2 million has already been admitted to

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1 not being supplied by the applicant but being
2 part of DDOT's project?

3 MR. JENKINS: No.

4 MR. SULLIVAN: Are you aware of
5 any other amounts that are on this list in the
6 \$9.2 million that actually aren't going to be
7 supplied by the applicant but will be paid by
8 the city, the taxpayers, or some other agency
9 besides the applicant?

10 MR. JENKINS: No.

11 MR. SULLIVAN: No further
12 questions. Thank you.

13 CHAIRMAN HOOD: Thank you very
14 much.

15 Mr. Jenkins, let me just ask I
16 know Skyland has been around for a while. I'm
17 not sure how long you've been working on the
18 project. I think I might have asked that the
19 first night. It's been a couple of years.

20 But let me just ask, I know
21 there's some reservations, maybe there's some
22 approval with a few restrictions, or some

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1 things that some of the folks in the community
2 would like to see with conditions. Has this
3 project come to form to be further, I guess,
4 bridging a gap? Because apparently at one
5 point it was far apart. I'm sure that along
6 with the Deputy Mayor's Office, the Office of
7 Planning, and others have had charrettes with
8 the community.

9 Two questions. Would you say that
10 there's been a large involvement from the
11 community and participation in what goes on
12 there in Skyland? And also, has that gap
13 grown closer to where we are today?

14 MR. JENKINS: Again, so I'll speak
15 to my recent involvement. I, obviously,
16 haven't been involved in this project over the
17 10 or so years that the project has been under
18 way.

19 But my understanding is that there
20 has been considerable outreach by the
21 developer to the community. I personally have
22 attended a number of community meetings where

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1 the developer has engaged the community in
2 what I thought was very productive
3 communication. In fact, even bringing models
4 to the community to look at what an actual
5 development would look like.

6 So I think there's been
7 opportunity for productive participation. And
8 I think those meetings have been productive,
9 yes.

10 CHAIRMAN HOOD: All right. That's
11 really all I have. Thank you.

12 Colleagues, anything else?

13 Thank you very much, Mr. Jenkins.
14 We appreciate your testimony.

15 MR. JENKINS: Thank you.

16 CHAIRMAN HOOD: Let me ask
17 Commissioner Richards, if you want to come
18 forward and give us your presentation? Mr.
19 Davis is going to do the presentation? Okay.
20 Yes. Commissioner Richards, you come sit at
21 the table with him. Is this one of your
22 fellow ANC Commissioners?

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1 MR. RICHARDS: Former Commissioner
2 but he's the head of the Committee.

3 CHAIRMAN HOOD: Okay. I think you
4 submitted something to that effect. Okay.
5 You submitted something? Good. Thanks for
6 reminding me.

7 And your name again, sir?

8 MR. DAVIS: Kenneth A. Davis. Is
9 my light on? Kenneth A. Davis. I believe you
10 have a letter in the package there. My name
11 is Kenneth A. Davis. I'll be representing the
12 ANC-7B. I believe you have my testimony.
13 I'll be starting with the page that has 3012
14 on it.

15 CHAIRMAN HOOD: Just give me a
16 moment. Some of us are not as organized up
17 here as others. Papers start getting mixed up
18 and I can't seem to find mine, but I do want
19 to follow you.

20 MR. DAVIS: Okay.

21 CHAIRMAN HOOD: I'm going to give
22 you this back. I found mine and I'm going to

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1 take notes on it. Just bear with us. Okay.
2 I think we all have it in front of us.

3 Mr. Davis, if you could begin?

4 MR. DAVIS: Okay.

5 CHAIRMAN HOOD: Thank you.

6 MR. DAVIS: Again, my name is
7 Kenneth A. Davis representing ANC-7B.

8 ANC-7B unanimously approved a
9 motion listing the conditions to be met by the
10 Skyland applicant in Zoning Case 09-03 prior
11 to ANC-7B's recommendation for approval. I've
12 got a good pair of glasses on me so I can read
13 this.

14 The conditions are as follows, one
15 of four:

16 (1) Provided that the applicant
17 and Fort Baker Drive residents execute a
18 Construction Management Agreement, bond, or
19 equivalent instrument to the satisfaction of
20 Fort Baker Drive residents, and provided that
21 the developer otherwise reasonably meet the
22 concerns of the Fort Baker residents and the

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1 ANC-7B.

2 This agreement shall include
3 mitigations of issues identified by the owner
4 residents of the single family homes located
5 on Fort Baker Drive SE directly behind and
6 abutting the subject property. They have
7 expressed concerns about the impact on their
8 property as a result of the proposed
9 redevelopment.

10 In particular, these residents
11 have significant concerns relative to the
12 impact of the rezoning of the adjacent
13 traditional R-5-A Zoned Districts to a much
14 more dense C-3-A Zone District, and a
15 development of 135,000 square foot formal
16 retail store, and other high density uses and
17 structures on land that is contiguous to these
18 properties just a few feet from the single
19 family homes.

20 (2) Provided that the applicant
21 execute an agreement that meets the intent of
22 paragraph FNS 2.7 of the 2006 Comprehensive

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1 Plan concerning buffering.

2 Specifically, that plan says work
3 with the property owners to develop and
4 maintain a suitable visual, sound and security
5 buffer between the Skyland Shopping Center and
6 the adjacent residents on Fort Baker Drive.

7 The agreement shall reasonably
8 meet the requirements of the Comprehensive
9 Plan and the concerns of Fort Baker Drive
10 residents and ANC-7B.

11 (3) Provided that the applicant
12 shall continue to review the proposed design,
13 location, and operation of the planned ramp in
14 Block 1 rooftop parking areas with Fort Baker
15 Drive residents and ANC-7B.

16 The goal shall be to determine the
17 location further removed from the existing
18 homes, and develop a design and operation plan
19 that: The minimizes visibility of the ramp to
20 the adjacent residential property owners to
21 the north; minimizes the impact of noise
22 generated by cars, trucks, loading; prohibit

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1 traffic serving the PUD area from using 30th
2 Street between Park Drive and Alabama Avenue.

3 The applicant shall take measures
4 to restrict all residents and employees in the
5 PUD from obtaining local neighborhood
6 residential parking permits or their
7 equivalent for parking in a residential
8 neighborhood.

9 (4) Has to do with community
10 benefits. The ANC feels strongly that the
11 project amenities and public benefits be
12 viewed in terms of Section 2403.8.

13 That is to say the Zoning
14 Commission in deciding the PUD application
15 must balance the offered amenities and
16 benefits against the incentives requested and
17 the adverse impact of the development.
18 Benefits and amenities are those items over
19 and above the normal and legally required
20 development activities.

21 In this case, the applicant should
22 be required to submit to the Zoning Commission

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1 a final agreement with ANC-7B as to the
2 specified amenities and benefits. These
3 benefits and amenities could both detail the
4 manner and legally required items proposed,
5 and carry the weight of the PUD benefits
6 granting the applicant and the negative
7 impacts of the community by those concessions
8 and overall development.

9 ANC proposed community benefits
10 are attached and have been recently submitted
11 to the applicant. However, we note that the
12 ongoing activities and negotiations with the
13 Fort Baker Drive may be cause for additional
14 benefits.

15 And finally, be it resolved that
16 the Advisory Neighborhood Commission hereby
17 recommends approval of the PUD.

18 The last item is simply a listing
19 of the 21 items that we consider community
20 benefits.

21 And that is the end of my
22 testimony.

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1 CHAIRMAN HOOD: Okay. Thank you
2 very much, Mr. Davis. We appreciate your
3 succinctness in getting through your
4 testimony.

5 Commissioner Richards, did you
6 have anything you want to add?

7 MR. RICHARDS: No.

8 CHAIRMAN HOOD: Commissioners, do
9 you have any questions? Commissioner May?

10 COMMISSIONER MAY: Yes. I would
11 be curious as to what you think the current
12 package of benefits and the current state of
13 development are in comparison to what you're
14 requesting in terms of the conditions.

15 MR. DAVIS: The ones, the \$9.2
16 million that we heard earlier?

17 COMMISSIONER MAY: No. I'm
18 thinking from top to bottom, the Construction
19 Management Agreement and everything else.
20 Have you had discussions with the developer
21 about that; have they agreed to it?

22 We have a list of what the

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1 benefits are right now, but I don't know
2 whether any other negotiations have occurred
3 and how things check off.

4 MR. DAVIS: No, they have not.

5 COMMISSIONER MAY: Okay. Have
6 they met any of them?

7 MR. DAVIS: Yes. I guess there
8 are a couple of them that may be applicable.
9 And you're going to ask me which ones, so
10 let's see.

11 COMMISSIONER MAY: That'd be
12 helpful.

13 CHAIRMAN HOOD: You know what? I
14 was trying to refrain from asking, because I
15 look at this list that they have --

16 COMMISSIONER MAY: Well, I guess--
17 I mean, the things that I'm --

18 CHAIRMAN HOOD: Let me do this.

19 COMMISSIONER MAY: Sorry.

20 CHAIRMAN HOOD: Let me just say
21 this. 1 through 21, I want to give it some
22 time. Now I agree with your question but I

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1 was trying to figure out how we can get some
2 time so we can kind of see where they are --

3 COMMISSIONER MAY: Yes.

4 CHAIRMAN HOOD: -- as opposed to
5 what we were given. Because I think you asked
6 for some money from some schools and I see
7 here there's a lump sum here --

8 MR. DAVIS: Yes.

9 CHAIRMAN HOOD: -- and I see there
10 are five schools here. So what I would try to
11 do, and Commissioner May, unless you want to
12 take the time to do it now, give them some
13 time to do that.

14 And before we go back to the
15 applicant you can come forward. I think that
16 will give you some time. Take your time and
17 figure out what matches what and what
18 corresponds with what.

19 And then that way you can come
20 back and tell us numbers 1, 2, 7, 9, 12, or
21 hopefully it would be all 21; it would be nice
22 if it was all 21 have been met. I'm sure

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1 it'll be 1 or 2 because I'm looking at
2 Commissioner Richards now. But let us kind of
3 know where you are. And I think that's in
4 line of questioning. You might not want to
5 have to answer this right now.

6 MR. DAVIS: Yes. Okay.

7 CHAIRMAN HOOD: But maybe we can
8 go onto some other questions, and that's one
9 of the questions that we'll come back to.

10 COMMISSIONER MAY: Okay. I think
11 that's fine when it comes to the list of 21.
12 I guess I'm interested more in the other
13 conditions. I have a few follow-up questions
14 on that.

15 Have you discussed at all a
16 Construction Management Agreement with the
17 developer?

18 MR. DAVIS: I have not.

19 COMMISSIONER MAY: You have not
20 discussed it; it's never come up in a meeting
21 or anything?

22 MR. DAVIS: No. No, it has not.

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1 This is a very recent development.

2 COMMISSIONER MAY: Okay. I mean,
3 it's a pretty commonly proffered condition on
4 PUDs so I'm surprised that it hasn't come up.

5 MR. RICHARDS: We see that as
6 three separate things.

7 COMMISSIONER MAY: Yes.

8 MR. RICHARDS: There are the
9 things which are required by law, and some of
10 those the developers included in their list of
11 items into that \$9.2 million.

12 COMMISSIONER MAY: Right.

13 MR. RICHARDS: Then there are the
14 things which are required as a matter of law
15 for the PUD. And those would be the things
16 that make this as a PUD a more viable project
17 than separately development without a PUD.

18 And then there's the list of
19 things which are benefits to the community as
20 a result of the negative impacts. And their
21 list is really one and two, and ours is really
22 three if you look at it in that context.

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1 CHAIRMAN HOOD: I think I know
2 what you're -- these four here, I think there
3 are four major things --

4 MR. RICHARDS: Yes.

5 CHAIRMAN HOOD: -- that they had
6 here other than the long list. And I think we
7 can do those four. Because I'm not sure if I
8 understood that answer.

9 COMMISSIONER MAY: Yes. I'm not
10 sure I'd necessarily cast it exactly the same
11 way.

12 I mean, certainly some of the
13 things that you're talking about in that third
14 class, such as a Construction Management
15 Agreement, you would regard as mitigation for
16 impacts to the community. However, as I said
17 before, that is something that is commonly
18 proffered as an amenity of a project under the
19 PUD. So it could really fall into that second
20 class if it had been discussed and negotiated
21 and agreed to and all that, because we can
22 only act on what's being proffered. We don't

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1 demand things or negotiate things; we only
2 react to what's proposed to us. We prefer
3 that these things be negotiated, and it's
4 presented to us and the community is in
5 agreement. That's the ideal situation.

6 Let me move on to the next one
7 which I have a more specific question on,
8 which is the number 2 with regard to buffering
9 for Fort Baker Drive. We had some significant
10 discussion of that so far. And I'm wondering
11 what your specific reaction is to the
12 distances, to the way the project has been
13 modified, to the planting plans, the walls,
14 all of the things that are being done to
15 mitigate some of those impacts that you
16 describe under number 2?

17 MR. DAVIS: Still unacceptable.

18 COMMISSIONER MAY: Still
19 unacceptable? Do you have any specific
20 suggestions on what you'd like to see there?

21 MR. DAVIS: Distance. I think
22 that's --

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1 COMMISSIONER MAY: The property is
2 only so big, right? The property is only so
3 big. I mean, you can only push things so far
4 away.

5 MR. DAVIS: Well, we've seen a
6 plan a few years ago that was some 100 feet
7 back, didn't go into the ravine at all. So
8 it's certainly possible.

9 COMMISSIONER MAY: Okay. And what
10 about the changes that were done to Block 1
11 and the way that was moved back? That's your
12 condition number 3. What's your reaction to
13 that?

14 MR. DAVIS: Well certainly what
15 was done in Block 1 may be adequate but it's
16 still too close, if you follow me.

17 COMMISSIONER MAY: Yes.

18 MR. DAVIS: Okay.

19 COMMISSIONER MAY: So it's better
20 but not good enough, in your view?

21 MR. DAVIS: Yes.

22 COMMISSIONER MAY: Okay. Those

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1 are the more specific things that I had
2 questions about. That's it for me.

3 CHAIRMAN HOOD: Okay.
4 Commissioner Turnbull?

5 COMMISSIONER TURNBULL: Thank you,
6 Mr. Chair.

7 I guess my only -- the first two
8 pages, the four conditions are your
9 conditions. But what's this third page with
10 like 21 items; what does that represent?

11 MR. DAVIS: That represents a
12 condition also in the sense that we would
13 expect some community benefit, and I
14 understand that word hasn't been defined but
15 at least our definition of community benefits,
16 for the adverse impact of the development on
17 the community. And we'd like some
18 consideration for that, so we've listed that
19 as a condition.

20 COMMISSIONER TURNBULL: Could you
21 tell me how item 13 represents an adverse
22 impact, is doing something to mitigate an

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1 adverse impact? I just don't
2 understand how providing free wireless high
3 speed capacity for housing and business
4 throughout the life of the development
5 represents mitigation of the impact of a
6 project. I think that's a wishlist. We'd all
7 like that. I'd like to get free internet for
8 the rest of my life, too. But I mean, isn't
9 that going beyond the intent of what the
10 amenities are?

11 I mean, I think we have to be
12 realistic with amenities. I really think that
13 amenities have to get to the heart of the
14 community, and looking at a PUD how it comes
15 in and what it does. I think at some point we
16 have to come to grips with real issues.

17 To me, this thing seems to go
18 beyond the intent of what an amenity is. I
19 mean, I understand we like to get as much as
20 we can. But I think we have to draw a line on
21 some things and really look at what's the
22 heart of the issue, what's the meat of the

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1 problem here, and what can we do to ameliorate
2 the concerns of the community and the
3 citizens.

4 MR. DAVIS: I certainly
5 understand. I don't have the exact rationale
6 as to why that was put in.

7 COMMISSIONER TURNBULL: Okay.

8 MR. DAVIS: It was designed by
9 Committee, but --

10 COMMISSIONER TURNBULL: I
11 understand. Thank you.

12 CHAIRMAN HOOD: I thank
13 Commissioner Turnbull with your line of
14 questioning especially for the 21. I heard
15 Commissioner May on the four.

16 I think if we could kind of look
17 at 13 and say, is this really realistic?
18 Because at the end of the day we have to
19 balance this. And we'll have to balance the
20 amenities with what's being asked for.

21 I think what I would encourage Mr.
22 Davis and Commissioner Richards for you to do

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1 is, as I've asked, just look at that 21. All
2 of it's realistic, I would love to have these,
3 too. But from our standpoint, help us to help
4 you.

5 The ones that you feel: Okay.
6 That's really not realistic. Maybe we can get
7 this another way. I would ask that you do
8 that. So when we come to our deliberations it
9 would make our deliberations a lot easier.

10 MR. RICHARDS: Could we have a
11 week or two to put that together?

12 CHAIRMAN HOOD: Out of the 21 and
13 you'll come back with it shaved off?

14 MR. RICHARDS: Yes.

15 CHAIRMAN HOOD: You asked for --

16 MR. RICHARDS: We would also like
17 to sit down with the applicant and discuss it
18 with them, and see what their views are.

19 CHAIRMAN HOOD: This hasn't been--

20 MR. RICHARDS: They've seen this
21 but there have been no discussions with them
22 about this.

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1 CHAIRMAN HOOD: You haven't had
2 any discussions on these four points or the 21
3 points?

4 MR. RICHARDS: That's right.
5 These were approved at our meeting on November
6 17, which was just before we began filing
7 things for this hearing. And we have not had
8 a meeting with them since then. So it would
9 probably be appropriate for us to sit down
10 with them.

11 CHAIRMAN HOOD: Right. I will
12 tell you that I would encourage that, but I
13 will say that I'm not mandating anybody to
14 meet. But it would be nice. In those two
15 weeks it would be great with the stipulation
16 if you come back with just five on the list.
17 Now, that was a joke. That was a joke.

18 Okay. Any other questions?

19 Does the applicant have any cross-
20 examination?

21 Thank you. Mr. Tummonds.

22 MR. TUMMONDS: Thank you, Mr.

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1 Davis.

2 On November 20, 2009, Exhibit 25
3 of the record, the applicant submitted a
4 Development and Construction Management Plan.

5 Did the ANC have the opportunity to review
6 and comment on that Development and
7 Construction Management Plan?

8 MR. RICHARDS: Yes. We've
9 reviewed it but we have not commented on it.

10 MR. TUMMONDS: Okay. Last
11 question I have I think is a follow-up. an
12 enhanced question to what Commissioner May
13 asked. Condition number 3 with regards to the
14 revisions to the designed location and
15 operation of the parking ramp for Block 1.

16 Has the ANC reviewed the January 21,
17 2010 submission of the applicant where that
18 parking ramp was internalized to address
19 issues regarding sound? Does that address the
20 concerns raised by ANC-7B?

21 MR. DAVIS: We looked at it and it
22 does not.

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1 MR. TUMMONDS: No further
2 questions.

3 CHAIRMAN HOOD: Mr. Tummonds, help
4 me. What exhibit was that, the Construction
5 Management Plan?

6 MR. TUMMONDS: Exhibit 25 of the
7 record. It was in our November 20, 2009. It
8 was the same filing that included our rèsumès.

9 CHAIRMAN HOOD: Okay. Good.
10 Thank you.

11 Okay. Mr. Sullivan, do you have
12 any cross-examination?

13 MR. SULLIVAN: No questions.

14 CHAIRMAN HOOD: Thank you.

15 Okay. Thank you very much for
16 your presentation. And we're going to work on
17 the two weeks that Commissioner Richards has
18 asked for. We're going to work on that and
19 see, so stay tuned. Let's try to get that
20 together.

21 Okay. I got my last minute
22 instructions. We're going to now call for

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1 organizations and persons in support. We have
2 a few.

3 I'm going to ask Gary Gold -- no,
4 that's opposition. Okay. She has it so the
5 Xs and the 0s and the squares -- got it so
6 nice for me and I still messed it up. Okay.
7 Let me do this.

8 In support, Karen Lee Williams or
9 Marvin Bowser? Okay. You can come forward.

10 Deborah Jones? Charmaine Thomas?

11 If it sounds like it's your name, believe me,
12 I've messed it up so if you can come forward.

13 Mr. and Ms. Wade?

14 Okay. So right now who I should
15 have at the table is Karen Lee Williams or
16 Marvin Bowser, looks like it's Williams.
17 Deborah Jones, is Deborah Jones here? Okay.
18 Charmaine Thomas? She's not here; we have her
19 testimony. Mr. and Ms. Wade; we have their
20 testimony. Richard Evans? Do we have his
21 testimony? Probably. Okay.

22 Villareal. Who?

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1 MR. JOHNSON: Villareal.

2 CHAIRMAN HOOD: Villareal, I'm
3 sorry. Excuse me. Johnson, 7A. Forgive me.

4 I think I noticed Eugene Kinlow.
5 Is Mr. Kinlow here?

6 And the last one, I'm sorry. I
7 don't even know where to start. Can you help
8 me? Number 32.

9 MS. SCHELLIN: It looks like the
10 last name --

11 CHAIRMAN HOOD: Julius Ware. I
12 would have never got that.

13 MS. SCHELLIN: I'm going to put a
14 sign up that says, "Please print."

15 CHAIRMAN HOOD: All right. So
16 that's all I have right now. Is there anyone
17 else here who would like to testify in
18 support?

19 Okay. Let's begin with Ms.
20 Williams, and we'll just go to my right.
21 Start with Ms. Williams and go right down the
22 line.

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1 MS. WILLIAMS: Thank you. I'm
2 Karen Lee Williams, President of the Hillcrest
3 Community Civic Association, and I reside at
4 2914 W Street SE. The reason that's important
5 even though that's not in my testimony is that
6 I live at the corner of W Street and Fort
7 Baker Drive. So the impact on Fort Baker
8 Drive, except my house is not at the ravine
9 site with the same view, will be -- the same
10 conditions will affect my property.

11 The mission of -- we are here --
12 well, Marvin is not here so I will skip that.

13 We speak today on behalf of the
14 Hillcrest Community Civic Association. The
15 mission of HCCA is to enhance the quality of
16 life and prosperity of the residents,
17 families, community organizations, businesses,
18 and institutions within our boundaries. HCCA
19 fulfills its mission in part by advancing the
20 interests of our members before the government
21 and private sector, and leveraging our
22 collective influence to achieve community

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1 improvements.

2 The HCCA represents more than 400
3 households in Ward 7. The boundaries are
4 Pennsylvania Avenue SE from 31st Street to
5 Southern Avenue, Southern Avenue to Naylor
6 Road, Naylor Road to 27th Street, 27th Street
7 and Naylor Road to Pennsylvania Avenue and
8 31st Street. Skyland is the major commercial
9 area located within our geographic boundaries.

10 There are five major points we
11 would like to convey to the Zoning Commission
12 on why we support the Skyland Town Center
13 development and the development team Skyland
14 Holdings, LLC.

15 First, Hillcrest and its residents
16 have been the catalyst, visionaries, and
17 champions for the Skyland redevelopment for
18 more than 15 years. Initially Skyland, a
19 major shopping area serving our section of the
20 city, was falling prey to neglect, and we
21 worked to revitalize the shopping center. In
22 2000 we started making a case to former Mayor

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1 Anthony Williams for a brand new Skyland
2 Shopping Center.

3 Second, HCCA members in large
4 numbers have participated in every public and
5 community process to help shape this project
6 into a proposal for a prominent shopping
7 center, living, and gathering place to meet
8 the needs of our thriving community.

9 We have provided compelling
10 testimony at every City Council proceeding to
11 make a successful case for the \$40 million in
12 city financing.

13 We successfully led the fight
14 against the effort by the private owners to
15 prevent revitalization by proposing to use
16 historic preservation of unqualified
17 buildings.

18 We also helped make a successful
19 case for the use of eminent domain as a means
20 for the city to purchase the property for
21 revitalization process.

22 Though we are disappointed as a

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1 community by the pace of the project due to
2 the legal entanglements associated with
3 eminent domain, we acknowledge the steady
4 progress on the project by the city government
5 and the Development Team.

6 Third, Gary Rappaport and his
7 partners were selected through a competitive
8 process. The Development Team has become a
9 valued partner in our community. We have
10 worked with them for 9 years and know them to
11 be open, forthright, and accessible.

12 Thus far, they have lived up to
13 all their commitments. They have supported
14 community causes and projects over the 9 year
15 period. We have monitored other projects
16 developed by members of this team and have
17 been pleased with the outcomes of these
18 venues.

19 The Development Team has listened
20 to our concerns and has been responsive to our
21 needs in changes in design. HCCA has become
22 confident they will build a high quality

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1 project as planned. We are also
2 confident they will continue to be responsive
3 to the needs of those property owners who live
4 on Fort Baker Drive in close proximity to the
5 development who have legitimate and documented
6 concerns about the effect of the development
7 on the stability of their homes.

8 We will actively work with
9 Rappaport to ensure that the team continues to
10 be a good neighbor through every phase of the
11 Skyland project, through completion and
12 beyond.

13 Fourthly, HCCA enthusiastically
14 supports the town center mixed-use retail and
15 residential project as designed. We feel it
16 will compliment and upgrade our existing
17 community.

18 We have publicized the design of
19 the project and related materials on our
20 website and through our listserv for many
21 years, in addition to having a presentation on
22 the final design, the PUD application, and the

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1 Community Benefits Package in February 2009.

2 We think the Community Benefits
3 Package is a good one. Its provisions are
4 consistent with the goals and priorities of
5 HCCA.

6 Most importantly, we feel HCCA and
7 other members of our community have a
8 relationship with the developer that will
9 allow us to work together to produce a final
10 package that is accessible to all parties.

11 In closing, the HCCA is the entity
12 that made the compelling case for the new
13 construction development of the Skyland
14 project before the District government in
15 2000. We have provided leadership and support
16 in the community before the government, and in
17 support of the Development Team consistently
18 since that time. Our organization has
19 hosted no less than 50 Skyland updates at our
20 Association meetings over the past 9 years.
21 And we have presented testimony at every
22 public meeting sponsored by the executive

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1 branch, NCRC, or the City Council, and
2 participated in numerous sessions sponsored by
3 the developer over this period.

4 Also be advised that our Board of
5 Directors passed a resolution in support of
6 this project in May 2007. This resolution
7 remains in effect and is attached if you want
8 a copy.

9 Thank you for this opportunity to
10 testify and I will be happy to answer any
11 questions.

12 CHAIRMAN HOOD: Let me first --
13 and I appreciate Ms. Williams going over her
14 time. Because what she did was she set the
15 bench mark for everybody else. So I want to
16 be fair.

17 Ms. Williams, I gave you an
18 additional roughly about another minute.

19 So I want to make sure I'm fair to
20 everyone else, whether you're in support or
21 opposition. We will give you another minute
22 if you so choose to take it. If not, when you

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1 hear the bell you can stop, but if not you'll
2 have another minute. Because you set the
3 groundwork, so you all can thank Ms. Williams.

4 Typically at 3 minutes we usually cut it off
5 but since I let Ms. Williams continue, we're
6 going to be fair.

7 MS. WILLIAMS: That's all I want
8 to say.

9 CHAIRMAN HOOD: Yes. You had 5
10 minutes but it rang, so really you went to 6.

11 But that's okay, keep up the good work. Hold
12 your seat and let's go -- let me get it right
13 this time.

14 Mr. Villareal Johnson? Did I get
15 that right?

16 MR. JOHNSON: Almost. It's like
17 Rumpelstiltskin, you've got three more tries.
18 It's Villareal.

19 CHAIRMAN HOOD: I might strike
20 out.

21 MR. JOHNSON: It's Villareal. The
22 problem is that people try to pronounce how it

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1 looks, but it's not that way.

2 CHAIRMAN HOOD: Well, I will tell
3 you, it's written down here twice. I guess
4 you wrote it and I'm not sure who else did.
5 And we have a question mark behind it because
6 we were trying to figure it out. So next
7 time, you ought to help us out and print.

8 MR. JOHNSON: No problem. I'll do
9 the enunciation next time for the spelling.

10 CHAIRMAN HOOD: Okay. Thank you.

11 MR. JOHNSON: Good evening. Thank
12 you for granting me this opportunity to
13 present and voice my opinion. My name is
14 Villareal Johnson. And it is truly a great
15 day for the residents of East Washington.
16 It's a great day because we move closer and
17 closer to an all-inclusive comprehensive
18 development project worthy to our liking.

19 As a native born in the Hillsdale
20 community of Ward 8 and as a current Ward 7
21 resident, I am elated to say let's move
22 forward and make this a reality. For too long

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1 we have yearned for a development of this
2 magnitude.

3 I can remember as a youth bussing
4 to the shopping center for fast food and use
5 of the Post Office. Now I look forward to
6 shopping for quality retail items and dining
7 at white table restaurants, and visiting
8 friends who will call this home.

9 I am aware that there are a few
10 who are not satisfied and feel the need to
11 protect their vested interests as well as
12 personal interests. I support that as well.
13 However, the good of the majority must
14 prevail. We need this development as it will
15 greatly improve the quality of life for all
16 residents east of Anacostia.

17 The project will bring quality of
18 life amenities like needed goods, services,
19 and of course jobs. God knows in this economy
20 we need jobs.

21 I know that this will increase the
22 density of the area. But increased density

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1 means more tax dollars and more opportunities
2 to have true community development, and
3 improved social conditions for residents.

4 I have participated in many of the
5 charrettes, in addition to being a member of
6 the Washington Youth Foundation. I have also
7 chaired the Housing and Economic Development
8 Committee for Marshall Heights Community
9 Development Organization.

10 I know that this project will
11 present many opportunities to improve the
12 quality of life of residents east of the
13 Anacostia River. It will also give
14 opportunities for persons from other parts of
15 the city, as well as Maryland, as well as
16 Virginia to know what we already know. And
17 that's Ward 7 and Ward 8 is a great place to
18 live, work, shop, and eat.

19 So please, let's move forward and
20 let's resolve any concerns that would affect
21 persons in the immediate area. Let's find
22 amenable solutions. Let's get a win/win. But

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1 by all means, let's get this done. And let's
2 get this done for the good of the whole and
3 prosperous community.

4 Thank you.

5 CHAIRMAN HOOD: Thank you, Mr.
6 Johnson.

7 Mr. Kinlow?

8 MR. KINLOW: Ladies and gentlemen,
9 my name is Eugene Dewitt Kinlow and I'm here
10 to share brief comments in support of the
11 Skyland Town Center concept. I'm also here to
12 urge you to move this plan from concept to
13 reality.

14 For the record, I'm a lifelong
15 resident of the District of Columbia and Ward
16 8, and I've resided in Ward 8 for over 40
17 years. I reside at 3952 2nd Street SW.

18 I have personally attended
19 numerous Skyland development community
20 meetings over a number of years. I see
21 widespread support for the redevelopment of
22 Skyland based on a tremendous need for goods,

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1 services, and jobs in our River East
2 communities.

3 Support for this plan is tied to
4 the thought that our community deserves more
5 than the meager selection of services and
6 amenities that we currently have. We deserve
7 a well thought out concept on this 18 acre
8 site that delivers access to services,
9 amenities, and jobs. Our community deserves a
10 proper mix of national brand retailers,
11 neighborhood-serving shops, restaurants, and
12 affordable and quality housing. Such a mix
13 could provide greater stability to our
14 communities and add much needed dollars to our
15 tax rolls.

16 It goes without saying that such a
17 plan must be well thought out and address
18 community concerns. I and the community
19 support a plan that incorporates landscaping,
20 trees, shrubs, and environmentally friendly
21 buffers to meet high environmental and
22 protection standards for the site.

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1 In regard to transportation
2 elements, I support the proposed improvements
3 to the street and traffic, including improved
4 pedestrian crossings, traffic signals, and
5 improvements at the various intersections.

6 I also encourage a continuous
7 dialogue with the DC city government to
8 evaluate enhanced transportation planning
9 efforts over time. The developers have worked
10 with the District government and understand
11 that as they continue to analyze
12 transportation and traffic issues and propose
13 additional improvements including parking.

14 I believe that the Skyland Town
15 Center development is consistent with the
16 Comprehensive Plan, land use, and urban design
17 provisions. And I am confident that the
18 developers will protect the property and views
19 of the Fort Baker Drive neighbors. I urge the
20 Zoning Commission to approve this plan
21 expeditiously.

22 Thank you.

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1 CHAIRMAN HOOD: Thank you, Mr.
2 Kinlow.

3 Mr. Ware?

4 MR. WARE: Good evening. My name
5 is Julius Ware. I'm the President of the Ward
6 7 Business and Professional Association. We
7 are the defacto Chamber of Commerce for Ward
8 7. And we support this project for a number
9 of reasons. This evening I don't have written
10 testimony, so I'm just going to bullet it out.

11 We support this project for the
12 over 700 businesses in Ward 7, the 60 plus CBE
13 businesses in Ward 7. We feel that this
14 project will offer jobs and contracts to those
15 within the footprint and the Ward.

16 We believe that the track record
17 and the history of the Development Team has
18 proved that they have the community's best
19 interests at heart that they do work in, and
20 that they do in fact provide good community
21 benefits. We're confident that the team will
22 exceed best efforts to provide and include

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1 these opportunities to Ward 7 businesses.

2 We're certain the team will
3 distinguish between benefits to the city --
4 I've heard a lot of conversations about
5 community benefits. But we feel confident
6 that this team will distinguish community,
7 will break them into two categories, and
8 distinguish those benefits that impact the
9 city and those that impact the ward, and
10 highlight those so that the ward residents can
11 readily understand that these benefits are
12 impacting them.

13 We feel confident that this
14 development project is good and that this
15 Development Team will assist us in walking up
16 to a bid.

17 We feel very confident that this
18 Development Team will identify tangential
19 opportunities. For example, opportunities on
20 other projects that they have that the team is
21 participating in, that they will identify
22 those opportunities for the businesses and

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1 jobs for the residents. And when those
2 opportunities are available that they will
3 promote them through their partners so that
4 the community can see that they are in fact
5 good developers.

6 We believe that this team is
7 innovative and that they will practice that
8 innovation, excuse me, as they attempt to
9 address the community benefits as various
10 groups like the ANCs and other organizations
11 have laid out.

12 For example, I heard someone
13 mention about wifi. Well, OCTO currently is
14 engaged in a project of bringing broadband to
15 all areas of the city. The Obama
16 Administration has also identified stimulus
17 dollars. And we feel that these are
18 opportunities where the Development Team can
19 be innovative and identify those opportunities
20 that they don't necessarily have to carve out
21 their own money, but that they will partner
22 with those entities that are already out there

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1 to address many of these community benefits.

2 We encourage the Zoning Commission
3 to expeditiously approve this. And we want to
4 thank you for this opportunity to testify.

5 CHAIRMAN HOOD: Thank you, Mr.
6 Ware.

7 I want to thank this panel for
8 your testimony. We may have a few questions.

9 Commissioner Turnbull?

10 COMMISSIONER TURNBULL: Thank you,
11 Mr. Chair.

12 Ms. Williams, thank you for being
13 here.

14 You represent a lot of homeowners
15 with HCCA.

16 And I guess this is directed to
17 all of you, how much input have you had or
18 discussions with the ANC-7B? I sort of see
19 ANCs asking for other -- you haven't really
20 been asking Ms. Williams for more amenities
21 than what the applicant has asked for. But
22 the ANC has seemed to be reaching out looking

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1 for a few other things.

2 Are you in sync with what the ANC
3 is looking for? I guess I'm just wondering
4 where the dialogue is between the ANC and you
5 folks.

6 MS. WILLIAMS: ANC-7B and
7 Hillcrest Community Civic Association has a
8 lot of dialogue. As a matter of fact, at
9 every monthly meeting we invite ANC-7B
10 representatives to be part of our meeting. So
11 there is a lot of overlap.

12 Hillcrest Community Civic
13 Association came to a resolution earlier than
14 ANC-7B. I can't speak for their specific
15 community benefits. When we did our
16 resolution in 2007 we did not address the
17 issue specifically of community benefits. And
18 as an organization we have not gone back to
19 readdress that issue. We let them address
20 that issue.

21 COMMISSIONER TURNBULL: Okay. Mr.
22 Ware or Mr. Kinlow?

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1 MR. KINLOW: I just think that
2 over time this plan has grown in terms of its
3 concept and its scope. There have been times
4 I think in the past where the community and
5 the ANC were probably closer and probably on
6 the same page. But the Development Plan has
7 migrated into some new territory.

8 And I think that the dialogue is
9 still there, but there's just a difference in
10 opinion on some points. But I think that they
11 can be worked out in the end. I think they
12 can all be worked out.

13 COMMISSIONER TURNBULL: I'm just
14 trying to think that we're trying to get to
15 closure on the project. And I'm just
16 wondering, at some point are you going to meet
17 with the ANC? I'm looking at the applicant.
18 I guess I'd like to from a community
19 standpoint resolve as quickly as we can the
20 outstanding issues so that we can go forward.

21 MR. WARE: Mr. Turnbull, if I may,
22 the Business Association is actively engaged

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1 in doing an overview of community benefits.
2 We're having conversations to, if you will,
3 develop a framework for community benefits for
4 projects. And we haven't reached out to the
5 developers or the ANCs, but we feel very
6 confident that the developers, the team as
7 it's constituted right now, will actively
8 participate in this process. And many of the
9 benefits, as I attempted to point out, can be
10 addressed. There are overlapping requests.

11 We feel that working together
12 demonstrating, as this Development Team has
13 demonstrated on various other projects and I'm
14 very confident that they will on this one,
15 work to address many of these community
16 benefits and assist the community, as well as
17 working through those issues similar to when
18 the Senate and the House come together. And
19 they have, you know -- yes, thank you. They
20 have a conference and they work through these
21 issues because they have the same goal. But
22 we have to work through these issues.

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1 So I'm saying that I feel very
2 confident that this team will participate in
3 that process and demonstrate goodwill
4 throughout.

5 MR. JOHNSON: Mr. Turnbull, just
6 if I could take a stab at it. I've looked at
7 this project from different lenses for a while
8 now. I'm trying to understand what would be
9 your concern. Are you looking for more of the
10 same from the two groups?

11 COMMISSIONER TURNBULL: Well, I
12 didn't really hear from any of you any concern
13 about lack of amenities on the part of the
14 applicant. You felt comfortable, I think,
15 with the direction of the project, other than
16 the wifi which you brought up as a possible
17 stimulus item. But the ANC has clearly got
18 some caveats for their approval of the project
19 which go beyond what the applicant has
20 originally proposed. So I'm just wondering,
21 if you're representing the community in the
22 meetings with the ANC, I see a little bit of a

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1 splinter going on. I'm just trying to see how
2 far apart you really are.

3 MR. JOHNSON: I would think that
4 ANC-7B is looking at it with a different lens.

5 I don't think it's a negative thing. I am
6 also an ANC Commissioner but I'm just for 7A.

7 And throughout my involvement and
8 awareness in this process -- I'm here of
9 course in the capacity of Secretary for
10 Washington East Foundation. And of course as
11 a part of the Skyland Development Team we have
12 taken avenues to incorporate what the people
13 of the area wanted. ANC-7B has their
14 population of people that they're representing
15 and they have their different lenses. I do
16 agree that there should be, if possible before
17 this thing hits the final slate, that there
18 should be a conversation to see where the
19 rubber could meet the roads and we could be on
20 the same page across the board as much as
21 possible.

22 But there must be note that there

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1 have been attempts at conversations between
2 the different groups to do such. But again,
3 they have the right to have their opinion and
4 their perspective.

5 And it's not that we're not in
6 agreement across the board. I think for the
7 most part you will hear that everybody wants
8 this done. How is always going to be the
9 difficult part. It's democracy; it's a
10 political process. It's an economic
11 development action item. I means there's
12 going to be differences. But I think for the
13 most part, except for the little variances,
14 it's the same.

15 COMMISSIONER TURNBULL: Yes. I
16 was just trying to get to a point. And I know
17 the Chair often talks about trying to get
18 closure on issues and get to a point where
19 this body, this Zoning Commission can look at
20 things and feel that we have everything before
21 us, and feel that we've got the interests of
22 the community at heart here. So that was my

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1 only concern.

2 MR. KINLOW: Let me just say that
3 I think this process is a lot like making
4 sausage, right? There's a lot of different
5 parts to it but the negotiations are still
6 ongoing. I think the doors are open, the
7 conversation is still going on.

8 And there will be, I believe, a
9 product that serves the needs of all the
10 stakeholders in the community whether it's
11 businessowners, residents, those folks who
12 feel a direct impact on the value of their
13 property or their quality of life. And you'll
14 see a lot of those things, I think, taken care
15 of in the short term. So I think the process
16 of negotiations is still going on.

17 MS. WILLIAMS: I just want to say
18 I agree that the ANC and HCCA have a very open
19 relationship. And we can sit down and work
20 out any differences, I think, move
21 everything--

22 COMMISSIONER TURNBULL: So you

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1 might be looking at their list?

2 MS. WILLIAMS: Yes. Well, I
3 haven't seen it yet. That's --

4 COMMISSIONER TURNBULL: Okay.
5 Thank you.

6 MS. WILLIAMS: Yes.

7 CHAIRMAN HOOD: Thank you. Good
8 questions.

9 Commissioner May?

10 And one of the reasons that we try
11 to encourage applicants, ANCs, and community
12 folks to come closer together because at the
13 end of the day in Ward 7 -- I live in Ward 5.
14 My colleagues up here, we don't live in Ward
15 7. You're the ones who are going to have to
16 endure. You're the ones who have been at the
17 table.

18 And I'm going back to something
19 Mr. Johnson just said, and I'm going to ask
20 this question of some people who come up in
21 opposition. He said that everybody wants to
22 see something done and I guess it's whatever

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1 lens -- I don't know if I'm exactly quoting
2 you correctly directly, but if I'm not you can
3 cut me off.

4 I think at the end of the day,
5 we're trying to balance to get the win/win for
6 you, the applicant who has come to the
7 neighborhood and wants to develop the
8 community, who's going to be there for the
9 life of the project or even longer. But I
10 just think that it's -- the way we see it
11 right now, it's all over the place. And for
12 the 9 or 10 years that we've been working on
13 it and I'm hearing the people say they haven't
14 seen this document or haven't seen that
15 document. And it just shows you.

16 We only get, what, two or three?
17 This is our third hearing or second? They all
18 run together. This is our third one. Thank
19 you.

20 So that's about how much time we
21 get. We get a packet on Thursday. And some
22 people I think have been working on this for 9

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1 years; we've been working on it for a few
2 weeks. So we try to make the best informed
3 intelligent decision we can, first of all for
4 Ward 7 residents and the applicant, and then
5 for the city as a whole. And that's what
6 we're grappling with.

7 So we were hoping, and I think,
8 Mr. Turnbull, you can correct me if I'm
9 incorrect, we try to get that gap closer
10 together. Because Mr. Turnbull, Mr. May and
11 myself, and my other colleagues who are going
12 to participate, we like to try to get the
13 neighborhood and the applicant as close
14 together before we make the decision. So
15 that's where we are.

16 And I will say this. For 9 years
17 and for all the time you've been working on
18 it, I'm just kind of set back a little bit
19 when I hear that people say that they haven't
20 seen this document, haven't seen that
21 document, or this hasn't happened. I'm trying
22 to figure out, 9 years, what's been happening?

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1 MR. JOHNSON: Well, that's the
2 funny thing about projects that take a decade
3 and longer. You have different players that
4 come in at any given point of time, different
5 leadership roles, different changes. There's
6 been recent changes with ANC-7B in particular.

7 There's been changes with the leadership of
8 HCCA. There's been changes with Marshall
9 Heights Community Development Organization.

10 A lot of people who start this
11 project won't necessarily finish. And those
12 who come in the end, those who come in the
13 middle, granted, they offer variance. But the
14 bottom line, hopefully when this is all said
15 and done, this community wants this project
16 and they want this project to be the best
17 project that it can be.

18 Now, we understand that there are
19 individuals that are affected because of their
20 personal property interests or what have you.

21 We've got to resolve that because they do
22 have a right to maintain what's theirs. But

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1 the good of the whole should persevere, it
2 should exist and work for everybody, you know,
3 Ward 7, Ward 8, the city as a whole.

4 We have to do this in a manner
5 that a win/win is achieved. And a win/win
6 does not necessarily mean everybody gets
7 everything they want. But if the majority
8 gets a quality development that works, it's
9 okay.

10 CHAIRMAN HOOD: Okay. And again,
11 the closer we can get together, we understand
12 that roles change. I personally have been on
13 the Zoning Commission for over 12 years, so I
14 know how that stuff works. This is not my
15 first case and I understand.

16 But again, what I think Mr.
17 Turnbull is alluding to -- and I'm saying this
18 for everybody, not just for you Mr. Johnson,
19 but for everybody. The closer we get
20 together, the easier our jobs are to a certain
21 point. Because we still have some rigs that we
22 have to look at when we deal with this case

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1 and we deliberate. And it's not always if
2 this street gets that or this neighbor gets
3 this, the ANC must -- we have some regulations
4 and the Code that we have to look at when we
5 resolve this.

6 But anyway, it seems like we're
7 moving forward with this hearing tonight. Let
8 me see if there's any other questions, because
9 I think this is going to be it tonight. Okay?

10 All right.

11 Thank you all for your testimony.

12 Wait a minute, hold it, cross-examination. I
13 shouldn't have said that.

14 Does the applicant -- okay. No
15 cross.

16 Commissioner Richards, do you have
17 any cross-examination?

18 MR. RICHARDS: No cross-
19 examination.

20 CHAIRMAN HOOD: Okay. Mr.
21 Sullivan, do you have any cross-examination?

22 Okay. Thank you all very much.

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1 Great discussion.

2 Let me just ask is there anyone
3 else who would like to testify in support and
4 I didn't call your name? Okay. Thank you.
5 We're going to go to opposition.

6 Before we do this, Mr. Sullivan,
7 I'm going to ask for a favor of you. And you
8 can refuse me if you want to but I'm going to
9 ask. What I would like to do is before we do
10 the party status in opposition, will you be so
11 kind as to let the individuals go that are in
12 opposition? And we can get through them, and
13 that way we can end with your presentation.

14 MR. SULLIVAN: Sure. No problem.

15 Yes.

16 CHAIRMAN HOOD: Okay. Thank you
17 very much.

18 MR. SULLIVAN: Sure.

19 CHAIRMAN HOOD: Okay. Mr.
20 Sullivan and the Fort Baker Drive party has
21 agreed to let the persons in opposition go
22 first. And we don't want to keep having you

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1 come back down just in case we have to have a
2 very narrow scope hearing again, which I hope
3 we don't have to because I think the hour is
4 still early. 8:00, okay.

5 Let me call individuals in
6 opposition. Gary Gold? I'm going to call
7 your name twice and if it sounds like your
8 name, just come forward. Gary Gold? I don't
9 see Mr. Gold.

10 Ronald Mitchell? Come forward.

11 Tiffany Brown? She testified at
12 the first hearing? Thank you very much.
13 Okay. Great.

14 Michael Witherspoon, CVS?

15 Dorothy Brown?

16 Cynthia Brock-Smith? Okay. Ms.
17 Smith.

18 John Faai? F-A-A-I?

19 Mary Green? Okay.

20 Karen Sibert?

21 MS. SIBERT: Sibert.

22 CHAIRMAN HOOD: Sibert? Okay.

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1 Mr. Sullivan, is your group going
2 to testify as a panel or how -- okay. I've
3 got you. Okay.

4 Is that all we have? That's it.
5 You know what, Commissioner Marlin just -- I
6 saw Commissioner Marlin; I'm not sure if she's
7 in support or opposition.

8 Are you in opposition or support
9 of this project? Okay. Well, here's the
10 thing, you're on. So you can come on up,
11 Commissioner Marlin.

12 Echols? Anyone by the last name
13 of Echols or first name of Echols? That's all
14 we have is Echols; I don't want to be
15 disrespectful. I'm not seeing Echols.

16 We have one more. George, you're
17 not going to testify?

18 How many more individuals do we
19 have here that want to testify in opposition?

20 Okay. I see just one. This is going to be
21 the last call. I see just one, now I see two;
22 can we make it three? Okay. We don't have

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1 enough room but for two. We have three seats?

2 Okay. Any other person who would like to
3 testify in opposition?

4 Okay. Right after this, Mr.
5 Sullivan, we'll take the Fort Baker Drive
6 group.

7 All right. Let's go back and see
8 who the first person was. Mr. Mitchell, if
9 you could start, and then we'll go to the
10 young lady here to my left. And then we'll
11 start with Commissioner Marlin to my right,
12 and we'll go down to my right after
13 Commissioner Marlin. Okay?

14 Mr. Mitchell, you may begin.

15 MR. MITCHELL: I, Ronald Mitchell,
16 2904 Alabama Avenue SE, Washington, DC am
17 appearing here at the Zoning Commission
18 hearing today to oppose the application of
19 Skyland Holdings for Planned Development and
20 Zoning Map Amendments of Skyland Town Center,
21 from 2626 Naylor Road SE to 2846 Alabama
22 Avenue SE.

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1 I have questions concerning the
2 proposed site:

3 (1) If the site consists of
4 approximately 18.7 acres and redevelopment
5 plans include 500 units of housing, what type
6 of housing could fit on 18.7 acres of land?
7 If my math is partially correct by dividing
8 18.7 acres by 500, and converting acres into
9 feet and feet into square feet; this would
10 not, in my opinion, leave room for people to
11 really live in. Okay.

12 (2) I have never had a definite
13 explanation as to where housing will be
14 situated on the proposed site. Will the
15 developer clear up my concerns? These
16 concerns include entrances, parking, public
17 alley access, and traffic congestion. This
18 includes additional noise.

19 (3) Will the development answer to
20 my satisfaction the proposed retaining wall
21 behind certain units? Is this an attempt to
22 dam up the flow of an existing stream with the

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1 retaining wall? I have ecological concerns as
2 to the impact the retaining wall will have on
3 the watershed and woodland areas directly
4 opposite to this wall.

5 All right. I did this on December
6 -- the first meeting. So I have some
7 additional stuff I want to put in to be done,
8 since I've got a couple more minutes. Let me
9 see. Okay. If I can get these in -- okay.

10 Who negotiated a land deal for the
11 people of the District of Columbia for such a
12 low bid price for a developer to develop
13 Skyland properties? The developer has stated
14 it will only cost him or her \$225 million to
15 develop, and the developer will collect
16 revenues in the future.

17 This property must be renegotiated
18 for the people of the District of Columbia for
19 at least \$1 billion.

20 Where is a long term commitment
21 for long term job creation?

22 I say no to the developer unless

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1 more money upfront is given to the District of
2 Columbia.

3 Why is it the people's land is
4 being given away for such a low bid price?
5 After all, the eminent domain was the rule of
6 order used to secure this land deal. Zero for
7 the District, 100 for Skyland development.

8 Okay. And a few weeks ago, the
9 landscaper for the Skyland properties listed
10 the fact that he thought the black locust
11 trees were sort of a nuisance type of tree.
12 Well, I'm referring to a Herbert Zim, a noted
13 botanist, the late Herbert Zim of the
14 University of Chicago who writes about the
15 black locust.

16 Black locust is a tree valued as
17 an ornamental for street planting as well as a
18 soil binder, which is badly needed there with
19 that erosion taking place, and stabilizing
20 eroded land. It is a --

21 CHAIRMAN HOOD: Mr. Mitchell, I'm
22 going to have to cut you off because we gave

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1 you your time and an extra minute.

2 MR. MITCHELL: That's okay. I
3 just wanted to --

4 CHAIRMAN HOOD: But just hold
5 tight. We may have some questions from your
6 research. Just hold tight.

7 MR. MITCHELL: All right.

8 CHAIRMAN HOOD: Okay. Where am I?
9 Ms. Green? Ms. Brown? I'm sorry, your name?
10 I'm going to go to Commissioner Marlin third.
11 Yes, you're next. I'm sorry, what's your
12 name?

13 MS. GREEN: Mary Green.

14 CHAIRMAN HOOD: Ms. Green? Okay.
15 You can go ahead and begin, Ms. Green. We'll
16 get it, unless you want us to follow you.
17 We'll follow you. Turn your microphone on,
18 Ms. Green.

19 MS. GREEN: How's that?

20 CHAIRMAN HOOD: That's good.

21 MS. GREEN: Okay. My name is Mary
22 Rose Green, and I have three lots on Fort

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1 Baker Drive totaling 70,666 square feet, or
2 about 1 and a third acre. I produced a map in
3 my file folder so you could follow along.

4 I have Lots 46, 47, and 63, Parcel
5 213. These three lots have extensive frontage
6 on Fort Baker Drive and 28th Street SE. Lot
7 46 has frontage on both 28th Street and Fort
8 Baker Drive.

9 These lots owned by the corporate
10 entities listed above, which are corporations
11 which I wholly own, abut parcel -- these three
12 lots abut the large parcels that are part of
13 the PUD. And that is Lot 52 which has 4.71
14 acres, and Lot 60 which has 16,250 square
15 feet. I've included a topographic survey of
16 Parcel 213, Lots 46, 47, and 63, which are in
17 the lower part of Fort Baker Drive.

18 I have extra copies of these if
19 you are still -- he's giving them out? Okay.

20 The above referenced properties
21 include the 4.71 acres, which is 205,220
22 square feet known as Lot 52. These were part

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1 of an assemblage under unified ownership
2 consisting of 31 properties and totaling 8.7
3 acres.

4 The District of Columbia seized 28
5 of the 31 properties. They did not take the
6 three lots on Fort Baker Drive, which are Lots
7 46, 47, and 63.

8 The 31 properties containing 8.7
9 acres are in current litigation and the
10 ownership which was unified still contends
11 that they own the properties, even though the
12 District has taken them by eminent domain.

13 Out of the 8.7 acres of land owned
14 or controlled by Mary Rose Green, the District
15 has seized 7.27 acres. Current ownership
16 status is in litigation with the District.
17 Litigation is now in the fifth year regarding
18 ownership, valuation and other issues.

19 I'm now reading on page 2.

20 An inventory of the 28 properties
21 taken and the three lots untaken is attached,
22 and their description is in a separate

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1 schedule in your packet.

2 In litigation in Superior Court of
3 the District of Columbia I have maintained
4 that seizure is illegal, and that the
5 ownership of the seized entire 28 properties
6 still vests in the names of Mary Rose Green
7 and the corporations. The parties in
8 litigation, namely NCRC which is now the
9 District, have been in litigation since July
10 3, 2005, almost 5 years since the supposed
11 quicktake by the District. In its complaint
12 the District maintained that even though it
13 had no funds in July 2005, a quicktake was
14 necessary so it could commence development
15 immediately. It later deposited --

16 CHAIRMAN HOOD: Ms. Green, I will
17 tell you that we have your testimony and I'm
18 going to have to cut you off. We gave you an
19 additional minute. We do have your testimony.

20 We may ask a few questions. If not, we do
21 have your testimony.

22 Okay. Commissioner Marlin?

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1 MS. HAMMOND-MARLIN: Hello. Good
2 evening. I'm testifying in opposition to some
3 of the supportive testimony that was given
4 here during the last hearing. For example,
5 the testimony given by the Office of Planning
6 as it referenced the parking spaces.

7 I do not feel that the parking
8 spaces that are being suggested by the Office
9 of Planning will be sufficient to accommodate
10 that location based on the traffic flow. And
11 also, this development abuts my Single Member
12 District which is Good Hope Marketplace.

13 I found it really insulting that
14 the Office of Planning would come up with a
15 proposal like that for an area that is so
16 heavily congested as it is with traffic flow.

17 And the idea of having a bus
18 station, a bus -- what is it, where you can
19 buy the Metro or something, buy the Metro
20 fares and that kind of thing? A kiosk, thank
21 you. Would be maybe the first of its kind in
22 the city. I don't think they need to start at

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1 that location, at the intersection of Alabama
2 and Good Hope Road and Naylor Road.

3 I just think that it's too
4 congested there. There are already pedestrian
5 and traffic concerns in that corridor.

6 And I think if the Office of
7 Planning took the time to come out and talk to
8 the ANC, and talk to the community to find out
9 what exactly their proposal would involve and
10 how it would impact us, I think they would
11 have come up with a better resolution if
12 they're looking for means for the citizens to
13 enter and exit that shopping center.

14 The other thing I'd like to put on
15 record is that I am in support of the ANC's
16 position in ensuring that the residents of
17 Fort Baker Drive, the contingencies that
18 they're asking for are met. We have talked
19 about those in sessions. And I don't think
20 that they're unreasonable, given the impact of
21 the development and some of the ramifications
22 possibly the development could have on their

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1 properties. I know I would be concerned.

2 But overall, I am in favor of the
3 project. It's been at least -- I've been
4 involved at least 10 years with the project.
5 We started with wanting that land revitalized
6 and we are where we are now. But in efforts
7 to try to enhance our community, I think we're
8 going in the correct direction.

9 But I think that we just need to
10 try to work out some of the differences that
11 the community has with the Development Team.
12 And I think we can move forward in a positive
13 manner. Thank you.

14 CHAIRMAN HOOD: Thank you very
15 much.

16 If you can introduce yourself, I
17 don't think I have your name. The last two
18 ladies, I don't have your names.

19 MS. JONES: Good evening. My name
20 is Kimberly Jones, and my comments will be
21 brief but heartfelt.

22 Good evening, Commissioners. I am

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1 a lifelong resident of the Hillcrest
2 community. I was born at and am now the owner
3 of 2916 Fort Baker Drive. And I'm here to
4 state my absolute opposition to this project
5 in its current form.

6 I understand that the Ward 7
7 Business Association and HCCA are in support
8 of it and are supposedly speaking as
9 representatives of the community. But I
10 believe that the issues that we have on Fort
11 Baker Drive are weighty and significant, and
12 perhaps are more serious than what the
13 community at large sees as economic
14 development and growth.

15 So I just want to say that I
16 strongly urge a consideration of rescinding
17 the proposal. Thank you.

18 CHAIRMAN HOOD: Okay. Thank you,
19 Ms. Jones.

20 Next?

21 MS. BING: My name is Yvonne Bing
22 and I am a resident of Fort Baker Drive. I

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1 submitted a letter to the Commission on
2 February 4 by fax opposing the PUD in its
3 current form. And at this time I would like
4 that letter to be entered for the record. I
5 don't know if you have that letter.

6 CHAIRMAN HOOD: Yes. We do have
7 it and it was faxed. I can't put my hand on
8 it right now, but we do have it and I will
9 look for it. Did you want to add anything
10 else?

11 MS. BING: Well, the only other
12 thing that I wanted to add is that we met with
13 the developers. And they indicated to us that
14 they were willing to have a company monitor
15 the vibrations during the construction phase.
16 And when I looked at the Construction Plan,
17 that was not a part of that plan.

18 So I don't know if that was an
19 oversight or if they're not willing to do that
20 now. But that was one of our main concerns,
21 the noise, the vibration, the traffic, the
22 environmental impact, etc.

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1 CHAIRMAN HOOD: Did you have
2 anything else that you wanted to add? Okay.

3 I want to thank you all. We may
4 have some questions.

5 Let me go right back to you, Ms.
6 Bing. Say that we were able to have the
7 applicant, and they heard you just now, put
8 that in the Construction Management Plan,
9 would this change your position to support?

10 MS. BING: No. Because an
11 environmental impact study was not done beyond
12 the site.

13 CHAIRMAN HOOD: Okay. Let me go
14 down this a little. I'm probably going to go
15 into some dangerous water here because we
16 don't deal with environmental impacts. But
17 let me ask you this, if that was done, would
18 that change you to support?

19 MS. BING: If an environmental
20 impact was done?

21 CHAIRMAN HOOD: Yes. If those two
22 things that you just mentioned were done,

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1 would that change your position to support?

2 MS. BING: What would change my
3 position to support this project?

4 CHAIRMAN HOOD: Okay. Maybe
5 that's the way I should have asked the
6 question.

7 MS. BING: Right.

8 CHAIRMAN HOOD: Okay. Thank you
9 for helping me.

10 MS. BING: Okay. So the thing
11 that would change my position is if they would
12 come to the residents of Fort Baker and put
13 everything on the table. Because from this
14 point on things have changed, and we haven't
15 really seen at this time what the project is
16 going to look like.

17 If they would do like a balloon
18 study that I could see from my house what the
19 project would look like, how tall it's going
20 to be, the scale. I can't really tell from
21 the models they've brought to us, and those
22 models from what I understand have changed.

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1 So we don't know what the project looks like
2 at this point.

3 CHAIRMAN HOOD: Okay. Thank you,
4 Ms. Bing.

5 Commissioner Marlin, you mentioned
6 the Office of Planning. Hasn't the Office of
7 Planning been involved with -- because you're
8 a Commissioner with 7B, am I correct?

9 MS. HAMMOND-MARLIN: ANC-7B05.

10 CHAIRMAN HOOD: ANC 7B05? Hasn't
11 the Office of Planning been out there involved
12 with those charrettes; haven't they been out
13 there?

14 MS. HAMMOND-MARLIN: I don't think
15 so. I don't recall them being out there.
16 Now, I did have a conversation with Ms.
17 Roberts, and I went back to look for an e-
18 mail. She did attend one of our ANC meetings
19 but it was on a different project.

20 Now, there's a couple of ANC
21 Commissioners in the audience. I don't
22 remember them coming to one of our community

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1 meetings to discuss Skyland, or having a
2 charrette, or even being at one of Gary's
3 meetings.

4 CHAIRMAN HOOD: Okay.

5 MS. HAMMOND-MARLIN: I can't
6 remember.

7 CHAIRMAN HOOD: I'm just curious,
8 Skyland has been around for a while. And I'm
9 just --

10 MS. HAMMOND-MARLIN: I'm sorry.
11 It has. I've been involved at least 10 years.

12 CHAIRMAN HOOD: I'm shocked that
13 it seems like nobody -- from what I'm hearing
14 from those in opposition, or even period --
15 the way the perception is, and my colleagues
16 you can help me if I'm misinterpreting this,
17 it sounds like nobody's mentioned -- it sounds
18 like you haven't been as a community. But the
19 applicant has presented to us that they have
20 had many charrette.

21 MS. HAMMOND-MARLIN: The applicant
22 has. I thought your question to me was

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1 specifically Office of Planning.

2 CHAIRMAN HOOD: Yes. The Office
3 of Planning. But what I'm hearing now, if
4 nobody is saying that the Office of Planning
5 hasn't been there; somebody else testified
6 they haven't had a chance to talk with the
7 applicant.

8 MS. HAMMOND-MARLIN: Well, the
9 applicant has been very forthcoming with us.
10 They've been to --

11 CHAIRMAN HOOD: Forthcoming with
12 you all? Okay. With the ANC?

13 MS. HAMMOND-MARLIN: With the ANC.
14 And also, they've had community charrette.
15 We had one at Winston Elementary School years
16 ago. I can't say that in fairness to them,
17 they have been out to the community and they
18 have met with the ANC. And we've had meetings
19 with them concerning community benefits.

20 CHAIRMAN HOOD: So they've shown
21 you models; you've seen what the project is
22 going to look like; you know the position of

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1 Block 1? Those are the kind of things that
2 I'm hearing. Because I think Ms. Bing, you
3 just testified --

4 MS. BING: Let me clarify that.
5 I've been to a lot of their meetings. But it
6 was in a conceptual stage, so things have been
7 changing. And as I said, today we don't know
8 what that project really is going to look
9 like, and like the levels, and what it's going
10 to look like from our homes, and things of
11 that sort.

12 They have been meeting with us.
13 But I don't think it's clear to all of us what
14 the real impact is going to be.

15 CHAIRMAN HOOD: Ms. Bing, I'm
16 going to try to help you. Because of the
17 questions of the Commission I think in our
18 first hearing, we asked for some stuff and I
19 think we got it. So maybe it just takes --
20 maybe they can show you what the Commission
21 has asked for.

22 They have that, and it was

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1 actually presented to us at the February 4
2 hearing. And I don't know if you were here
3 but it was presented to us then. Because we
4 asked some of the questions, how does it look
5 from Fort Baker Drive, and that was presented
6 to us. Okay? I'm sure they have it handy. I
7 don't know if we have it handy but they have
8 it handy. That may help.

9 Okay. I'm trying to bring this
10 together, here, before we -- because you all
11 are the ones that live in the community, and
12 that's where we are.

13 Any questions?

14 COMMISSIONER MAY: Mr. Chairman, I
15 have one question for Commissioner Marlin.

16 If I understood you correctly, you
17 were saying that you didn't agree with the
18 Office of Planning's suggestion with regard to
19 parking. And the reason was because you were
20 concerned about congestion.

21 MS. HAMMOND-MARLIN: Correct.

22 COMMISSIONER MAY: Okay. So I'm a

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1 little bit confused.

2 MS. HAMMOND-MARLIN: Okay.

3 COMMISSIONER MAY: You don't want
4 the parking reduced, right?

5 MS. HAMMOND-MARLIN: Correct.

6 COMMISSIONER MAY: More parking
7 means more cars means more congestion. So
8 what congestion are you concerned about?

9 MS. HAMMOND-MARLIN: Well, see, in
10 my mind -- and I'll preface it by saying I
11 just waited an hour and a half for a bus and
12 then I had to get on the subway. So I don't
13 really agree with public transportation as the
14 way to go.

15 And I think that if you're going
16 to a shopping center, and this is me speaking
17 and then I'll speak as a Commissioner, you
18 should have the option of being able to drive.

19 I don't think that, especially an
20 agency if you will, the Office of Planning
21 should come out and dictate to us that we
22 should not have certain ample parking spaces

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1 when they haven't been out to a meeting. And
2 I don't really know if they even surveyed the
3 area outside of sitting at their desk and
4 looking at something they've read.

5 COMMISSIONER MAY: But I'm just
6 confused. Tell me more about the congestion
7 aspect. What is it? I mean, you're worried
8 about where cars might park or you're worried
9 about the number of vehicles on the street?

10 MS. HAMMOND-MARLIN: Well, when I
11 say "congestion," I mean that that
12 intersection is already congested in terms of
13 retail. We have, you know, the Good Hope
14 Marketplace, and then of course we have
15 Skyland which we're talking about. Then
16 there's a couple of other stores there and a
17 couple of other businesses.

18 I think most people are going to
19 want to drive. And I think there should be
20 ample parking spaces so that you can park, and
21 it doesn't spill over onto neighborhood
22 streets which aren't far away; 30th Street is

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1 there. And then spill over into the parking
2 that's provided at Good Hope Marketplace.

3 I see no logic to having a
4 shopping center with insufficient parking
5 spaces, and then you're counting on people to
6 get on a bus to come do their shopping.

7 COMMISSIONER MAY: Okay. All
8 right. Thanks, and I understand what you're
9 saying.

10 I guess a sort of general comment
11 I had on some of the questions that came up
12 just in the testimony of several of the
13 witnesses right now is an unfamiliarity with
14 the project and with the drawings.

15 I think it was Mr. Mitchell, is
16 that right? You raised questions about the
17 number of units and what it's going to look
18 like and all those sorts of things, and I'm
19 wondering why. We've received reasonably
20 accurate drawings and they were updated for
21 the February 4 hearing. And I'm wondering if
22 this same information has been shared

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1 consistently with the community, and whether
2 you've seen the same drawings that were
3 presented here in the first hearing back in
4 December or the earlier February hearing.

5 So if anybody wants to say yes or
6 no or whatever, what you've seen?

7 MR. MITCHELL: Yes. Starting with
8 the December --

9 COMMISSIONER MAY: Yes.

10 MR. MITCHELL: -- hearings. But
11 before that I was not aware of how they would
12 -- even though I attended a meeting at Fort
13 Baker Drive where these gentlemen did present
14 us with a mock-up of how the proposed site
15 would look, it seems to me that I'm still not
16 clear as to how this place is going to be
17 really laid out.

18 COMMISSIONER MAY: Okay. I can
19 empathize with that. It's a lot of
20 information to absorb, particularly when you
21 don't do it all the time. And I do it all the
22 time and I still have to struggle sometimes to

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1 absorb it all. But my concern is whether it's
2 actually being out there.

3 MS. BING: We did not see the
4 current drawings from the February 4 meeting.
5 We have not had another meeting with --

6 COMMISSIONER MAY: When was the
7 last time you saw drawings?

8 MS. BING: November.

9 COMMISSIONER MAY: November?
10 Okay. I think the set that we have, I don't
11 know if I have the date on it or not. Does
12 anybody offhand know what the date of that
13 submission was? This had to have been earlier
14 than November. September 21 is what
15 they're telling us this is from. So you
16 probably saw the same set of drawings that
17 we're working from. The only thing that might
18 have changed is the changes that they made to
19 Block 1, which we saw on February 4.

20 So I think that we should be
21 relatively in sync in terms of drawings. So
22 that was my basic question. Thanks.

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1 CHAIRMAN HOOD: Mr. May, are you
2 looking at Exhibit 20? Is that Exhibit 20,
3 the latest one?

4 COMMISSIONER MAY: Yes.

5 CHAIRMAN HOOD: Okay. All right.
6 Thank you. When did we get this?

7 COMMISSIONER MAY: It was with the
8 hearing package. It was a hearing submission,
9 I think.

10 CHAIRMAN HOOD: Did we get it at
11 the last meeting or did we get it prior?

12 COMMISSIONER MAY: No. We got it
13 in December. Yes. The only thing we got at
14 the last meeting was the small package, I
15 think.

16 CHAIRMAN HOOD: Right. Okay.
17 This is what we got at the last meeting.
18 Because that was what was given to us to show
19 the views.

20 COMMISSIONER MAY: Right.

21 CHAIRMAN HOOD: Because I remember
22 Commissioner Keating had mentioned that he had

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1 gotten this and he was okay with it.

2 Okay. Any other questions of this
3 panel?

4 And Ms. Green -- not Green, is it
5 Green? Okay. Ms. Green. I saw your issues
6 but some things are not within our
7 jurisdiction, what's going on in the court,
8 unfortunately.

9 MS. GREEN: I didn't get to the
10 heart of the letter. The letter was about the
11 water flow on Fort Baker Drive.

12 CHAIRMAN HOOD: Okay. Why don't
13 you take a minute and tell us about that, and
14 we'll read it.

15 MS. GREEN: Right now the water
16 from the large parcel, or most of the PUD,
17 flows to the Fort Baker Drive side because
18 there's a ravine. And Mr. Duke of Mr.
19 Rappaport's, who is the civil engineer for Mr.
20 Rappaport, did testify that there is a soil
21 there but he's never seen any water in it
22 unless it rains.

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1 And when it rains all of Fort
2 Baker Drive, 30th Street, and the PUD
3 properties have rain water and they flow onto
4 my land. And they flow -- I have, as I said,
5 1.3 acres. And the swale which is on my land
6 carries all the water. I have looked at Mr.
7 Rappaport's plans. He does have storm water
8 management. But the exact plan of storm
9 management is not in the plans submitted here.

10 My concern is that you're going to
11 continue to use my property as a depository
12 for the rainwater.

13 CHAIRMAN HOOD: Okay.

14 MS. GREEN: That's my concern.

15 CHAIRMAN HOOD: Okay. I've got
16 you, heard you loud and clear. Thank you.

17 Any other questions of this panel,
18 colleagues?

19 COMMISSIONER TURNBULL: I guess I
20 would just echo Mr. May's comments about it
21 sounds like we've seen a lot of information.
22 We've seen drawings and revised drawings. But

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1 it sounds like the community still hasn't seen
2 a lot of these revised drawings that we've
3 seen, and there's still some confusion as to
4 what the project really looks like. I'm not
5 sure whether the applicant needs to have
6 another meeting to do show and tell.

7 COMMISSIONER MAY: I think
8 certainly what we're hearing tonight is enough
9 feedback to know that further interaction
10 between the applicant and the community would
11 probably be a very good thing for the project.

12 COMMISSIONER TURNBULL: Yes.

13 COMMISSIONER MAY: But what I got
14 from the questioning was that the most recent
15 version of the plans that we have were shown
16 at a community meeting as recently as
17 November. And so it had to have been pretty
18 much the same drawings. So they're not far
19 out of sync necessarily, but they're not
20 necessarily --

21 COMMISSIONER TURNBULL: Right.

22 COMMISSIONER MAY: We got to take

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1 home big thick packets and --

2 COMMISSIONER TURNBULL: Yes.

3 COMMISSIONER MAY: -- study them
4 to our heart's content. And I'm not sure that
5 level of information was handed to everyone at
6 those meetings.

7 COMMISSIONER TURNBULL: Right.
8 Yes.

9 COMMISSIONER MAY: So it's a lot
10 to absorb even if you have this.

11 COMMISSIONER TURNBULL: I would
12 agree.

13 COMMISSIONER MAY: Yes.

14 CHAIRMAN HOOD: So the good part
15 about it is the ANC meets tomorrow night, so I
16 think that's why we're doing a whole lot here.

17 And we can press things forward, I think.
18 Now, I didn't say that you had to have them
19 there tomorrow night. I'm just saying, I
20 think if we can press things forward we can
21 hopefully -- the meeting has been cancelled?
22 So we could have won our --

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1 COMMISSIONER MAY: You mean I
2 missed volleyball?

3 CHAIRMAN HOOD: He missed helping
4 his team win. So you have to see ANC; we have
5 to go out there one night.

6 MS. SCHELLIN: They have no
7 parking because of the snow situation.

8 CHAIRMAN HOOD: Right. Okay.

9 MS. SCHELLIN: And the sidewalk.

10 CHAIRMAN HOOD: Okay. All right.

11 But anyway, I think one of the things that we
12 -- and it goes to the question of Ms. Bing.
13 We were given this and this shows views.

14 And I would think that at some
15 point -- it's very unfortunate the ANC's not
16 meeting tomorrow night. And I understand the
17 reason why; we all do in this area. But
18 anyway, I think some of those questions can be
19 answered.

20 And I would just say to Mr.
21 Tummonds, you don't have to respond now.
22 You'll probably say, "Why are they asking us

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1 to do that? We've been out there a 100
2 times." I've been here long enough to know
3 you've probably been out there a 100 times.
4 But the key is we want to make sure everyone
5 understands, because some of that opposition
6 may go away.

7 But even at that, at the end of
8 the day the Commission is going to make a
9 decision. And we want to try to make a
10 decision that while we're not going to satisfy
11 everybody, but we're going to try to make the
12 best informed and educated decision that we
13 possibly can. And I think sometimes if you
14 ease some of the concerns, I think it just
15 makes things flow a little easier. You might
16 not get everywhere where everybody wants to
17 be. But I'm sure, Mr. Tummonds, you've been
18 around a while and I'm sure that you all will
19 do what you can do to help my colleagues get a
20 comfort level. Even though we might not get
21 everywhere where everybody wants to be, but we
22 can get as close as we can.

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1 All right. Enough lecturing.
2 Where did I leave off at? Okay. Cross-
3 examination.

4 Does the applicant have any cross-
5 examination?

6 Commissioner Richards, do you have
7 any cross-examination? Okay.

8 Mr. Sullivan, do you have any
9 cross-examination?

10 Is this our last panel for
11 opposition? Okay. Good. All right.

12 What I will do is I would like to
13 take a 3 minute break. My colleagues and I
14 will take a 3 minute break, which means it's
15 going to be 5 minutes. And we'll be right
16 back, and we'll get started with Fort Baker
17 Drive.

18 Let me thank this panel, too. I
19 appreciate it.

20 (Whereupon, at 8:41 p.m. off the
21 record until 8:49 p.m.)

22 CHAIRMAN HOOD: Okay. We're going

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1 to go ahead and try to get started with the
2 opposition Fort Baker Drive's presentation.
3 Meanwhile, Commissioner Richards is going to
4 be trying to help us coordinate a date. So we
5 appreciate you working on that while we are
6 hearing the presentation.

7 Okay. Mr. Sullivan, if we're
8 ready?

9 MR. SULLIVAN: We're ready. We
10 have a preliminary matter. We'd like to
11 qualify a traffic expert as a rebuttal witness
12 for traffic. We submitted a preliminary
13 report with our statement in opposition on
14 December 10, and Joe Mehra's CV was included
15 in that. And I believe he's been before this
16 Commission before, or the Board.

17 CHAIRMAN HOOD: Yes. Mr. Mehra is
18 transportation, right? That's what you're
19 proffering him as?

20 MR. SULLIVAN: That's correct.

21 CHAIRMAN HOOD: Okay. I've
22 actually seen Mr. Mehra before we proffered

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1 him, I know, on the BZA. I'm not sure about
2 the Zoning. But probably on the Commission
3 also.

4 Okay. Any problems? Okay. So we
5 will do that. I don't see any objections, so
6 we'll do that.

7 Thank you, Mr. Sullivan.

8 MR. SULLIVAN: Okay. Thanks. I'd
9 like to start with a short statement and then
10 we'll move right into the testimony.

11 My name is Martin Sullivan. I'm
12 here on behalf of the Fort Baker Drive party.

13 Good evening, Mr. Chairman and Commissioners.

14 The applicant has the burden of
15 proof to justify the granting of the
16 application according to the PUD evaluation
17 standards in the regs. And the upcoming
18 testimony will help to show that the applicant
19 has not met that burden.

20 A quick point on the big picture
21 before we move forward with the testimony. I
22 think, Chairman Hood, you said it best when

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1 you said the PUD process should be win/win.
2 And that's the beauty of the process that
3 theoretically everybody wins. Or at least if
4 not everybody gets to win, nobody loses too
5 much.

6 Well, here we have a situation
7 where my clients are about to lose too much.
8 In effect, my clients are being asked to take
9 one for the team. And they will be defacto
10 investors in this project with no chance of a
11 return on that investment.

12 They're certainly going to lose
13 their privacy, their peace, their quiet, and
14 the character of their single family
15 neighborhood. Not just from the massive
16 structures that will be a literal stone's
17 throw away from their homes, but also by the
18 increased traffic both cut-through and in the
19 general area. That alone is more than any one
20 resident homeowner should have to sacrifice.

21 But in addition to these concerns,
22 the residents also have a reasonable belief

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1 that they could literally lose their homes as
2 a result of the applicant's apparent lack of
3 concern for the soil erosion and stabilization
4 conditions on what was known as God's Dump.

5 You've heard the applicant, and
6 probably OP as well, claim that storm water
7 management and soil erosion issues are of no
8 concern to the Commission, and everybody can
9 pass the buck to DCRA. But the regs require
10 otherwise of this Commission, as does the Comp
11 Plan very specifically. So we believe the
12 Zoning Commission should weigh in on this
13 point.

14 The applicants, like many others
15 in this community, do support the
16 revitalization of the Skyland Shopping Center
17 in accordance with the original vision and in
18 accordance with the Comp Plan sections that
19 call for a "community-scale retail center,"
20 rather than the Skyland renewal on steroids
21 before you now.

22 My clients understand that this

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1 project is popular but they have faith in the
2 legal process that their property will be
3 protected.

4 Based on the applicant's dealings
5 with the Fort Baker Drive party, we think the
6 applicant believes that this Commission's
7 approval is a forgone conclusion. And that
8 mind-set shows in among areas of the
9 applicant's traffic study and the feeble
10 attempts to mitigate the visual impact of this
11 project on these homes, and also in the
12 applicant's message to just trust them, that
13 their construction activity won't damage these
14 homes.

15 If the current proposal passes,
16 it's a complete disaster for my clients and
17 they have no choice but to try to save their
18 homes and their biggest investment.

19 If there are no questions I'd like
20 to proceed with the testimony of Mr. Mehra.
21 Thank you.

22 CHAIRMAN HOOD: Typically what we

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1 do is you finish your whole presentation and
2 we ask our questions on the end.

3 MR. SULLIVAN: Thank you.

4 MR. MEHRA: Good evening. I'm Joe
5 Mehra and I'm going to talk about the traffic
6 study that was conducted by the applicant and
7 documented in the Traffic Report by
8 Gorove/Slade.

9 The traffic study follows
10 generally accepted industry guidelines for
11 conducting a traffic impact study. However,
12 there are several assumptions that were made
13 to arrive at the conclusions which are no
14 longer valid because of the assumptions. Some
15 of these discrepancies and shortcomings of the
16 traffic analysis will be presented by me.

17 In terms of the study area
18 intersections, they analyzed intersections
19 that were very adjacent or almost adjacent to
20 the site. There was only one intersection
21 that was further away that they analyzed which
22 is Branch Avenue and Alabama Avenue.

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1 The figure eight of the traffic
2 impact study shows that 35 percent of the site
3 traffic, 35 percent which is more than one-
4 third, will be coming on Naylor Road to and
5 from the north. However, no intersection was
6 analyzed along Naylor Road.

7 Similarly, 25 percent of the site
8 traffic will be coming on Good Hope Road to
9 and from the north. Again, no intersection
10 was analyzed along Good Hope Road. The
11 intersection of Good Hope and Minnesota Avenue
12 should have been included in the analysis.
13 And DDOT in their report had similar concerns.

14 In terms of the existing
15 conditions, the traffic data was collected
16 back in the year 2006. The analysis that was
17 done using that data was done in year 2008.

18 Since then I guess you can say 3
19 years or 4 years have passed, and typically
20 for a traffic impact study the data has to be
21 no more than 1 year old. These are the
22 standard industry guidelines that have been

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1 documented by the Institute of Transportation
2 Engineers. At the least, the applicant could
3 have collected data at one intersection in the
4 year 2008 or thereabouts to verify that the
5 traffic growth has been minimum since 2006
6 when the original data was collected.

7 In terms of the levels of service,
8 you've collected the traffic data, then you
9 analyze using the synchro model to compute the
10 levels of service. The synchro model
11 worksheets were included in the report as an
12 appendix. These worksheets had very limited
13 data in it.

14 For example, critical information
15 such as the cue lens at signalized
16 intersections were not reported. Basically,
17 the intersections are so close to each other
18 that anytime the cues exceed a certain number
19 of feet, it will spill back into the adjacent
20 intersection. But this information was not
21 provided.

22 Further, there's a big difference

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1 in comparing the actual model results which
2 are included in the appendix and the summary
3 results which are included in the body of the
4 report in Table 1. For example, the vehicle
5 delay for the intersection of Good Hope Road
6 and Naylor Road was reported as 60.2 seconds
7 per vehicle, whereas the model actually came
8 up with over 76 seconds of delay which is
9 almost 27 percent higher.

10 Similarly, the vehicle delay for
11 the intersection of Alabama Avenue and Naylor
12 Road was reported as 39 seconds per vehicle,
13 whereas the model actually showed 50 seconds,
14 almost 28 percent higher.

15 After you've done the existing
16 conditions analysis, then you move to the
17 background. The background is the future
18 traffic without the site being developed.
19 Again, the synchro model was used to compute
20 the level of service.

21 The industry practice is to use
22 the same signal timings and phasings as the

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1 existing conditions unless the signal phasings
2 have been changed due to geometric conditions.

3 Further, most of the signals are generally on
4 a coordinated system. Changing a signal
5 timing at one intersection can impact the
6 overall system. Changes should not be made
7 unless DDOT concurs with the changes.

8 It seems that Gorove/Slade has
9 changed signal timings at several
10 intersections in the background conditions in
11 comparison to the existing conditions. The
12 signal timing changes have actually resulted
13 in the background conditions operating better
14 than the existing conditions due to individual
15 intersection signal timing change, even though
16 there is an increase in traffic volumes.

17 An example is the intersection of
18 Alabama Avenue and Naylor Road. The 50.2
19 seconds per vehicle delay in existing
20 conditions decreases to 39.8 seconds per
21 vehicle in the background conditions.

22 After you do the background

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1 conditions analysis you compute the trip
2 generation from the site traffic.
3 Gorove/Slade used the ITE Trip Generation
4 Report to compute the a.m. and p.m. peak hour
5 trips, and reduced them to account for pass-by
6 trips, synergy reductions, and alternate mode
7 reductions.

8 The 25 percent reduction in pass-
9 by trips is reasonable. In terms of reduction
10 due to synergy, Table 6 of Gorove/Slade's
11 report shows that almost 46 percent of the
12 vehicle trips leaving the apartments in the
13 p.m. peak hour are going to on-site retail.
14 That means approximately half the people when
15 they leave their homes in the evening, they go
16 to the retail on the site itself. There is no
17 justification for using such a high synergy
18 factor.

19 Table 6 in the report also shows
20 that the vehicle trips to and from the site
21 were further reduced by 30 percent due to the
22 Naylor Road Metrorail station located

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1 approximately 1 mile from the site. Further,
2 Gorove/Slade refers to the WMATA 2005
3 Development Ridership Survey as a source for
4 this percentage reduction.

5 And I quote from the Traffic
6 Report, "Using the models provided in the
7 study and given the distance from the Naylor
8 Road Metrorail, a 30 percent reduction was
9 applied to the residential and commercial
10 trips." End of quote.

11 A review of this WMATA study
12 shows that all residential and commercial
13 sites that were in the study were within
14 approximately on-half mile of a Metrorail
15 station, not 1 mile. No sites were 1 mile
16 away from the station.

17 Further, this WMATA study showed
18 that the Metrorail most shared for residential
19 uses was 31 percent or one-half mile distance
20 from the station, as shown in Table 11 of the
21 WMATA report.

22 Further, this WMATA report shows

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1 that the average Metrorail most shared for all
2 retail sites, all retail sites in the study
3 sample was 29 percent. All study sites were
4 within 1,700 feet of the Metrorail station,
5 which is a quarter mile. Not, again, 1 mile
6 from the Metrorail station.

7 The use of reasonable and
8 acceptable reduction factors for synergy trips
9 and most shared trips will result in an
10 increase of vehicle trip generation shown in
11 Table 6 of the Gorove/Slade report. On a
12 daily basis approximately 13,000 vehicles will
13 be entering and exiting the site. This is
14 more than the total traffic that is currently
15 traveling on Good Hope Road and Alabama
16 Avenue.

17 After the site traffic is added,
18 Gorove/Slade computed the levels of service.
19 And as noted earlier, the signal timing should
20 have been the same as the existing conditions
21 or the background conditions. Gorove/Slade
22 changed the signal timing at most of the

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1 intersections in analyzing the levels of
2 service.

3 In some cases the clearance
4 intervals were reduced when analyzing the
5 levels of service. Clearance intervals is a
6 very significant safety issue. You cannot
7 reduce clearance intervals unless you reduce
8 the road rivets.

9 The traffic study as well as DDOT
10 has emphasized the need to accommodate
11 pedestrian crossings and pedestrian safety in
12 the traffic analysis. The levels of service
13 analysis does not incorporate an increased
14 level of pedestrian activity. The
15 incorporation of the increased pedestrian
16 activity can reduce the intersection levels of
17 service.

18 The traffic analysis has the
19 following shortcomings:

20 (1) It did not incorporate
21 critical intersections in the analysis even
22 though a significant portion of the site

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1 traffic will be passing by these
2 intersections;

3 (2) Made some assumptions that are
4 clearly invalid in terms of vehicle trip
5 generation. Correcting for these assumptions
6 would result in an increase in site trip
7 generation;

8 (3) The levels of service analysis
9 has not used the signal timing consistently
10 with the consequence that background
11 conditions are projected to be better than the
12 existing conditions even though there are no
13 roadway improvements and there is an increase
14 in traffic;

15 (4) The clearance intervals have
16 been reduced in comparison to the existing
17 conditions data;

18 (5) The use of the correct data in
19 trip generation, pedestrian activity, and
20 levels of service analysis may result in
21 several more intersections failing with the
22 site traffic.

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1 Due to the above listed
2 shortcomings, the traffic results are invalid
3 and cannot be used to assess the site impacts.

4 Due to the close proximity of the various
5 intersections, cueing will result in overlap
6 and block adjacent intersections.

7 MCV developed the AMP Single Car
8 Model using traffic data and signal timing
9 from the Gorove/Slade report for the total
10 conditions with the site developed. I'm going
11 to present to you the simulation of the
12 traffic through the road reenactor for the
13 a.m. peak period. The time period that you
14 will see is approximately 8:00 a.m.

15 That's the intersection of Branch
16 Avenue and Alabama Avenue. This is kind of
17 the overall network. And this is Alabama
18 Avenue. And then you have Good Hope, Naylor,
19 and there's the site.

20 What you are seeing is the
21 simulation using the traffic data, the signal
22 operations, and timing that Gorove/Slade had

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1 in their report. This does not incorporate
2 the increased traffic that would have resulted
3 if correct information was used.

4 As you can see, this is a
5 simulation of real world conditions where this
6 is a traffic signal. The red means that these
7 three approaches are red and you have the
8 leading green.

9 This is the intersection of
10 Alabama and Branch Avenue. This is the
11 traffic heading westbound towards 30th Street.

12 As you can see, it's already backing up all
13 the way onto Branch Avenue. And I guess this
14 one, the slide doesn't go far enough but the
15 Alabama Avenue approach is also backing up
16 quite a bit here. And this is Branch Avenue
17 northbound.

18 COMMISSIONER TURNBULL: What time
19 of day is this?

20 MR. MEHRA: Pardon me?

21 COMMISSIONER TURNBULL: What time
22 of day is this?

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1 MR. MEHRA: 8:00 a.m. in the
2 morning at 7:56 a.m.

3 Here, 30th and Alabama. And this
4 is the new intersection that was going to be
5 created across the shopping center and the
6 main street at Alabama and Good Hope. And as
7 you can see, a lot of these vehicles are all
8 trying to turn right onto Good Hope.

9 This is Naylor Road, Alabama
10 Avenue, and here's the 25th Street approach.
11 This is Good Hope approaching 25th. Here are
12 the cues. That is the cue along 25th.

13 When you summarize the data the
14 average speed in the network, in that whole
15 area that you looked at is 4 miles per hour.

16 Thank you.

17 CHAIRMAN HOOD: Let me just say,
18 Mr. Mehra, we want to be able to access this
19 quickly. We may have some more questions for
20 you --

21 MR. MEHRA: Definitely.

22 CHAIRMAN HOOD: -- once the

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1 presentation is over.

2 MR. SULLIVAN: Thank you. We'd
3 like to present Ronald Coal.

4 MR. COLE: Good evening,
5 Commissioners, Chairman Hood. I'm Ronald
6 Coal, as Marty said. I live at 2933 Fort
7 Baker Drive currently. I was born and raised
8 in Hillcrest, live at 34th and Alabama Avenue.

9 We purchased our new home in
10 February 2006, and completed an extensive
11 renovation of the property with the intent of
12 living and contributing to this community for
13 many years to come. Since that time we have
14 experienced the quiet enjoyment of our home,
15 which as you are aware is nestled behind the
16 existing Skyland Shopping Center.

17 When the redevelopment of Skyland
18 was originally considered, we did not
19 anticipate that the project would require a
20 zoning reclassification of the transitional R-
21 5-A Zone between the existing Skyland and Fort
22 Baker Drive to C-3-A.

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1 Nor did we expect that a WalMart
2 building, identified in plan as Block 1, as
3 well as other mixed-use structures identified
4 as Block 4, would be proposed for development
5 within such close proximity to our homes.

6 The impact of these monolithic
7 structures hovering nearly 60 feet over our
8 Fort Baker residences will be magnified
9 exponentially by the topography and elevation
10 of the proposed site. The proposed Block 1 is
11 just about 330 feet long, and the proposed
12 Block 4 is roughly 237 feet long. Since
13 Blocks 1 and 4 are essentially contiguous,
14 this will create a near-continuous wall that
15 is roughly the length of two football fields
16 behind our homes. Let's call it the Great
17 Wall of Hillcrest.

18 Before I continue I'd like to
19 paint a picture for you. Just before
20 nightfall I sat at my dining room table
21 preparing this testimony. From my dining room
22 I looked out of my windows into a calm and

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1 tranquil wooded backyard, taking in the
2 panoramic view. The natural light that was
3 peeking through the tree canopy at the top of
4 the hill on the other side of the ravine was
5 quickly beginning to fade. And despite the
6 chill in the air I cracked the window
7 slightly, just to listen.

8 What I heard was very unique for
9 an urban setting. Birds chirping, the
10 occasional small animal moving about on the
11 ground or in the trees. Now, of course an
12 occasional car drove up Fort Baker but other
13 than that, quiet. This is the grand appeal of
14 our Fort Baker Drive enclave. In my humble
15 opinion it is an urban oasis.

16 Having said that, I do understand
17 that the redevelopment of the Skyland Shopping
18 Center is a high priority for the city. But
19 while the city and local community might
20 desire this type of economic development
21 fundamentally, this project as currently
22 proposed goes too far and should be scaled

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1 back to fit the character of this low density
2 residential neighborhood.

3 While the developer might argue
4 that scaling back raises profitability and
5 viability concerns, I would counter that
6 argument with the fact that the developer will
7 pay \$1 for the property and will control the
8 leasing and management of the site in
9 perpetuity which, along with the other
10 incentives that the city will likely offer,
11 will most certainly prove to be exceedingly
12 profitable for the developer over the
13 effective life of the project. In effect, we
14 are talking degrees of profitability for the
15 developer versus potential adverse impacts on
16 the long-term community residents, the
17 taxpayers.

18 For these reasons as well as
19 others I will discuss, I am in opposition to
20 the rezoning application that is currently
21 under consideration.

22 The overwhelming size and scope of

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1 the proposed project will create significant
2 negative impacts related to traffic, light and
3 air quality, security and safety issues,
4 environmental issues, and concerns related to
5 property values. While this list is not
6 exhaustive, it should be sufficiently
7 illustrative of the gravity of my concerns.

8 Our traffic expert has provided
9 specific and convincing detail regarding the
10 fundamental flaws in the traffic study
11 presented by the developer's traffic
12 consultant. Additionally, both the Office of
13 Planning and DDOT have raised some concerns
14 with the study. So to this point, I am done.

15 Now, with regards to light and
16 air, the proposed WalMart as well as the
17 mixed-use structures on Block 4 and their
18 retaining walls will tower over my home due to
19 the general topography of the site as I
20 mentioned. This will obscure the clear view
21 that I currently enjoy as previously
22 described, a definite adverse impact. It will

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1 literally block out the sun.

2 Moreover, the proposed rooftop
3 parking and its requisite security lighting
4 will create a halo or stadium effect that much
5 of Fort Baker Drive and some of W Street will
6 be forced to experience, particularly during
7 the early evening and nighttime hours.

8 As such, the evening view from
9 both the rear and westernmost end of my home
10 will be dominated by a large wall of some sort
11 and an unnatural or manmade glow where only
12 the tree canopy and natural light currently
13 exist.

14 The parking aspect of the plan is
15 particularly troubling for several reasons as
16 well. First, per the developer's most recent
17 accommodation, the access to the parking is
18 now to be situated along the interior of the
19 easternmost edge of the WalMart. As the
20 parking will be on the roof, the consistent
21 rumbling of the numerous car engines,
22 screeching tires, and blaring horns will still

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1 be audible to me and the other Fort Baker
2 residents from our backyards. Not to mention
3 the noxious emissions and other pollutants
4 that will surely rain down on our lower lying
5 homes. As such, parking creates both a noise
6 and environmental hazard.

7 Lastly but equally as important as
8 the other concerns raised is the security or
9 safety aspect related to the potentiality of
10 having this out of scale commercial-use
11 operating directly adjacent to the lower
12 lying, low density residential properties
13 along Fort Baker. Over the years it has not
14 been at all uncommon for individuals evading
15 the police to flee the Skyland Shopping Center
16 over the existing fencing and through the
17 wooded areas to the east in the direction of
18 Fort Baker Drive. In fact, neighbors have on
19 numerous occasions observed these individuals
20 using their backyards as an escape route.

21 The theory is that by eliminating
22 the current transitional area between the

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1 commercial and the existing residential, it
2 becomes even more likely that someone eluding
3 law enforcement will be within yards of our
4 homes and our families if not quickly
5 apprehended. This poses an obvious safety
6 concern and potential hazard.

7 Ultimately these concerns and the
8 eventual development of the project as
9 proposed will have adverse impact on the
10 goodwill that we currently hold in our homes,
11 including but not limited to negative impacts
12 on our property values.

13 While this point seems contrary to
14 conventional thoughts surrounding
15 redevelopment efforts and the increases in
16 property values generally attributable to
17 these types of community amenities, the
18 proposed rezoning would change the status of
19 my home in that the R-1-B low density
20 residential zone will no longer be adjacent to
21 a transitional residential zone R-5-A, which
22 currently serves as our buffer. Rather, it

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1 will be situated next to a C-3-A commercial
2 zone. Additionally, the WalMart and mixed-use
3 development on proposed Block 4 will be the
4 neighbor at my immediate southwestern property
5 line.

6 So while other Hillcrest residents
7 might realize a slight boost in value for
8 their properties, my recently purchased and
9 renovated home will suffer unique and severe
10 adverse impacts in this regard.

11 So as I understand it, amongst
12 other things, this Commission is charged with
13 the responsibility of ensuring that the city
14 zoning, both existing and proposed, supports
15 compatible uses and appropriate transitional
16 zones between these uses, particularly between
17 single family residential and big box
18 commercial uses, thereby protecting the
19 taxpaying citizens of the District of Columbia
20 from uses that create adverse impacts on their
21 homes and/or their persons.

22 The adoption of the proposed

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1 zoning reclassification would essentially pave
2 the way for the developers to build a 135,000
3 square foot WalMart, and possibly down the
4 road other related structures at or in
5 extremely close proximity to our property
6 lines. The proposed WalMart with its
7 noncompliant rooftop enclosures and rooftop
8 parking will be roughly 110 feet, a mere 37
9 plus or minus yards, and quite literally a
10 stone's throw or bottle's throw, away from my
11 home and family.

12 Commissioners, as Mr. Sullivan
13 mentioned at the last hearing, the building
14 that you see from the window behind you just
15 across 3rd Street, that's 108 feet. This is
16 just about the distance from my deck to the
17 proposed Great Wall of Hillcrest.

18 The existing zoning already allows
19 for the most responsible development of the
20 proposed site and is fully supportive of more
21 appropriate transitional uses, like lower
22 density residential or open space. Based on

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1 this, I again must voice my most strenuous
2 opposition to the rezoning application as
3 currently proposed. You are the gatekeeper in
4 this regard.

5 I appreciate your time. Thank
6 you.

7 MR. SULLIVAN: Can we stop the
8 clock for a second while he gets the computer
9 ready?

10 CHAIRMAN HOOD: Sure.

11 MR. PUCKREIN: Thank you very
12 much. My name is Gary Puckrein. I reside at
13 2929 Fort Baker Drive. I want to voice my
14 opposition. I'm going to put it in the
15 context of the PUD.

16 I think that the proposed PUD,
17 sorry, violates the Comprehensive Plan and
18 other public policies. That the applicants
19 haven't produced sufficient evidence to allow
20 the Commission to determine the public benefit
21 of the proposed PUD. The evidence often
22 indicates that the PUD would have a

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1 substantial public harm. And I would also
2 say, I think as you'll see in the
3 presentation, there are potential legal
4 limitations to the rezoning of this property.

5 First, I want to talk about soil
6 erosion in the context of the Comprehensive
7 Plan of the Fort Baker buffer, and then say
8 quickly a little bit about what the community
9 wanted. So on the soil erosion, specifically
10 the PUD speaks about soil erosion and
11 particularly points out the Skyland/Alabama
12 area.

13 I know this Commission has heard a
14 lot about God's Dump. It actually has a
15 history. In 1978 Courtney Malloy did a story
16 in the Washington Post. Apparently a gentleman
17 by the name of Andrew God, a developer, looked
18 at that land and decided that he wanted to
19 build homes back there. And he decided to
20 turn it into a dump site in order to fill in
21 the land.

22 There actually was a lake back

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1 there, a stream back there, that he wanted to
2 close off. And what he did was he opened up a
3 dump-for-fee site in which Metro dump was back
4 there but there was also trash, the neighbors
5 say, the people who lived in that area. And
6 there's potential contaminants in the area.

7 What happened was the residents of
8 the area, those living in the four homes that
9 we live in next to what is proposed Skyland,
10 actually had to file suit because they came to
11 the city, including this Zoning Commission,
12 and said this guy has an unregulated dump
13 site. And the city refused to do anything
14 about it.

15 And what ended up happening is
16 that Kenneth Mundy, I'm sure a lot of you know
17 Kenneth Mundy, filed a lawsuit for the
18 residents. And actually also, according to
19 this letter, jointly filed against the city.
20 In the process of that lawsuit two studies
21 were done by George Washington University. We
22 have copies of that study. And the studies

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1 pointed out that that dump site was going to
2 erode the foundation of the existing homes
3 because it was moving that stream of water
4 towards the homes. And they anticipated
5 that it would erode the foundation of the
6 homes and also would have consequence for
7 future development, because it was an
8 unengineered dump site, an unengineered
9 landfill. In other words he didn't compact
10 it, he just did what he wanted to do to a lot
11 of the trash and stuff back there.

12 In 1979 the city finally filed
13 suit against Andrew God. And there was a
14 consent order in which he was supposed to
15 clean up that site. So a lot of that
16 elevation that you see there now should have
17 been cleaned up if the city had enforced the
18 consent decree, but they did not.

19 The threat to the homes were
20 realized. Part of the reason why the Fort
21 Baker group is here is because our houses now
22 sit on stilts, on helical piers because of the

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1 erosion that was a consequence of that dump.
2 Each of us has put substantial amount of money
3 on those stilts. And we have said repeatedly
4 to the developer, look, this is an unusual
5 situation. Our houses are not on firm
6 foundation.

7 There's also this whole issue of
8 low density. And the PUD is very explicit.
9 It says that the neighborhood is sure that the
10 Comprehensive Plan and zoning designations for
11 these neighborhoods reflect and protect the
12 existing low density land use patterns while
13 allowing for infill development that is
14 compatible with the neighborhood.

15 Also the PUD says that the
16 property owners on Fort Baker Drive, they
17 should be working with them to maintain a
18 visual, sound, and security buffer between the
19 shopping center and the residential homes.
20 The ANC as you've heard has also taken side
21 with the Fort Baker Drive residents in terms
22 of a buffer. So you have two government

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1 agencies now that have spoken out very
2 clearly.

3 So this picture here, that's my
4 house back there. That's the top of the hill.

5 That's what we're talking about in terms of
6 proximity to our homes. Our property line is
7 probably somewhere around here, right?

8 And here is where they want to put
9 a 60 foot structure. Obviously, it's going to
10 block out all of the light over here. You're
11 going to see it. And this is another home on
12 Fort Baker Drive. You're going to see it; it
13 is going to tower over that community without
14 a doubt. And so we're looking at this.

15 Also we're saying, you see down
16 here this hole? That's part of that
17 uncompacted landfill that the developer threw
18 there back in 1979. If the developer comes
19 here and starts compacting this, it doesn't
20 take a physics major to understand that this
21 is going to expand out towards our home.

22 And what we are concerned about is

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1 that once you give them license, they go back
2 there, they start compacting, our homes stand
3 in jeopardy. And what we've constantly said
4 to the developer is we don't want to take that
5 risk. We don't need to take a risk. We are
6 in quiet enjoyment of our homes and we don't
7 see why we need to take a risk. Because we
8 know the minute you go back there, our houses
9 are already on stilts, you're going to destroy
10 them. And we're going to end up in court
11 fighting over whether they destroyed them or
12 not. Meanwhile, we don't have a place to
13 live. And that's an uncautionable thing to
14 ask anybody.

15 What the community wants and what
16 we're not against is a shopping center back
17 there. That's what the proposal was. There
18 was no proposal about 500 apartments and a
19 WalMart and 1,600 parking spaces and traffic
20 out the wazoo. Nobody's been asking for that.

21 What people have been saying is, I
22 want a hardware store, I want a cinema, I want

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1 a bookstore, I want to go to a restaurant.
2 That's what they envisioned for Skyland. And
3 that is what the developer promised in the
4 court filings in the eminent domain case.

5 Specifically, it says the
6 developer agreed to build, lease, and operate
7 a retail center containing a non-grocery store
8 anchor tenant and not in excess of 50,000
9 square feet. That's what everybody understood
10 was going back there.

11 Let me stop by saying what we're
12 asking for in this project is out of scale
13 with the community. And we're basically
14 saying look, let's get this thing so it
15 comports with the Comprehensive Plan,
16 integrates into the community so that we can
17 have the retail center that we're looking for.

18 Thank you.

19 CHAIRMAN HOOD: Well, that was
20 very well done, and all the presentations were
21 very well done. We actually have adopted City
22 Council's switches, we don't have any

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1 demonstration whether you agree or disagree.

2 So I'm sure Chairman Gray would
3 appreciate that we do -- we're going to stop
4 the clock, but the clap took a little while
5 too. So we would ask that we abide by that
6 rule also, whether you agree or disagree. And
7 I'm sure the Chairman would agree with us with
8 that.

9 So could we stop the clock? How
10 many minutes did you -- I gave you 5, 10
11 seconds? You'll get those 10 seconds. You
12 watch the football and they say put them 10
13 seconds back on the clock; we'll do that.
14 Okay.

15 MS. SIBERT: Good evening. My
16 name is Karen Siebert and I reside at 2937
17 Fort Baker Drive. The Hillcrest community is
18 a quiet, advertent cluster of well-kept homes
19 that offers many of the advantages of suburban
20 living in an urban setting.

21 My husband Dennis and I moved our
22 family here from the area near North Capitol

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1 Street and Florida Avenue in search of a
2 neighborhood where our children could grow and
3 develop without being constantly exposed to
4 noise, unsanitary conditions, unsavory
5 characters, violence, and the 24/7 activity
6 that constitutes living in a concrete jungle.

7 We have lived on Fort Baker Drive
8 for nearly 20 years not without some of the
9 annoyances that come with urban living:
10 occasional vandalism and annoying traffic.
11 But overall it has been a serene and
12 satisfying existence.

13 Although we are just a short
14 distance from the bustling commercial strip
15 situated behind our home that is the Skyland
16 Shopping Center, we have been able to enjoy
17 our surroundings with little intrusion from
18 the world that exists over the hill. That is
19 due in large part to the natural wooded area
20 known as God's Lot or God's Dump, that serves
21 as a barrier between the commercial
22 establishments and our residential

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1 neighborhood.

2 For as long as we have lived
3 there, I have followed closely and supported
4 plans for redeveloping Skyland Shopping
5 Center, which currently is indeed an unsightly
6 blight on the community. As I understood it,
7 the goal was to replace the existing shopping
8 center with services that the community was
9 craving. And I believe the appropriate
10 project can help improve the character of the
11 neighborhood and provide needed services and
12 retail for residents. But as currently
13 designed it poses significant problems, both
14 real and potential, that must be resolved
15 before it is allowed to go forward.

16 My neighbors and I come before you
17 this evening to ask you to address these
18 issues thoughtfully and thoroughly, and not to
19 approve this planned unit development and
20 Zoning Map Amendment until such time as
21 revisions are made to eliminate any potential
22 hazards to the existing residents. Among our

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1 concerns: traffic, noise, lighting, security,
2 and environmental impacts.

3 Consider the adverse impacts of
4 allowing an existing natural barrier to be
5 eliminated between the four homes abutting the
6 area of commercial development, which we have
7 been told will consist of a big box retailer
8 and parking facility. From our vantage point
9 these impacts include:

10 (1) Causing further damage to the
11 already frail structural integrity of our
12 homes;

13 (2) Affecting the market value of
14 our homes;

15 (3) Transferring the risk
16 associated with the project to homeowners,
17 and;

18 (4) Destroying the quiet enjoyment
19 of our homes.

20 We believe that the development
21 involved in building a big box retail store
22 with an accompanying parking facility in close

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1 proximity to us will likely cause considerable
2 damage to the structural foundations.

3 It is no secret that the soil
4 conditions in this area are problematic as it
5 pertains to construction. As a matter of
6 fact, the city has acknowledged this area as
7 an erosion hot spot.

8 In addition, we have recently
9 learned of city actions in the 1970s to permit
10 dumping-for-fee in this area, as well as the
11 presence of an underground stream. Small
12 wonder that our foundations are not as stable
13 as they should be.

14 Our experience over the years with
15 this problem has required us to invest large
16 sums of money to reinforce our foundations and
17 repair frequent and seasonal cracks due to the
18 expansion, retraction and erosion of the soil,
19 as well as the effects of storm water runoff
20 all of which have taken a toll on our
21 properties and our purse strings.

22 And since our structures are

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1 already distressed from previous settlements,
2 it is reasonable to assume that our homes are
3 that much more susceptible to damage, a point
4 made by the developer's geotechnical engineer
5 in a report that was presented to the
6 community.

7 It should be noted, however, that
8 the engineer's report only addresses the
9 impact of dynamic compaction to improve the
10 soil within the footprint of the development.

11 It does not take into consideration how the
12 consistent movement of people and machines,
13 grading, construction and ongoing operations
14 at the site will further affect the delicate
15 structural conditions that exist as well as
16 our peace, privacy, and security.

17 And it is clear that no
18 comprehensive environmental study will be
19 undertaken to explore the true extent of the
20 impact that this development will have on the
21 community at large until after the Zoning
22 Commission has approved this PUD.

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1 Given the variety of issues that
2 remain to be addressed to our satisfaction,
3 it's not without merit to consider that we may
4 not wish to remain in these homes during
5 construction of the town center. In effect,
6 barring any legal or regulatory relief or an
7 agreement between the parties, we may find it
8 necessary to relocate to avoid the negative
9 effects of this development. As such, we
10 believe that the market values of our homes
11 will be reduced significantly as the pool of
12 buyers willing to purchase properties adjacent
13 to this construction may be small if not
14 nonexistent.

15 In addition, as sellers we have a
16 duty to disclose the fact that our homes may
17 be in jeopardy due to the proximity of this
18 project, or if construction has already begun
19 we would have to disclose any material defect
20 or damage that may occur as a result. In the
21 current economy this most certainly will taint
22 the attractiveness of our homes and give

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1 potential buyers pause.

2 In essence, unless the government
3 takes the necessary action to protect our
4 investment and provide some relief by
5 requiring that the project be scaled back, we
6 will find ourselves devoid of any other option
7 other than to grin and bear it, an
8 unacceptable and onerous position.

9 As homeowners and taxpayers we are
10 being asked to make the ultimate sacrifice:
11 The sanctity of our homes for the benefit of
12 the developer who stands to reap huge
13 financial benefits from this project for many
14 years to come. In contrast, we have only one
15 opportunity to enjoy uninterrupted use of our
16 homes. We will have only one opportunity to
17 recoup our investment through the sale of our
18 homes.

19 The citizens of the District of
20 Columbia are the owners of this land that will
21 be transferred to the developer at the cost of
22 \$1. Clearly, the developer is the party best

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1 positioned with the resources to address the
2 concerns that plague this project. Why, then,
3 are we homeowners being asked to assume risk
4 that bear no positive outcomes for us?

5 WC Smith and Rappaport Companies
6 may indeed be reputable and scrupulous
7 businesses, but we have no reason to believe
8 that any guarantees made might be fulfilled
9 without legal enforcement. Why should we be
10 expected to wait until some calamity happens
11 and subject ourselves to pursuing costly legal
12 action to force the developer to fix what
13 could have been avoided in the first place?
14 It is not at all clear to me why we should be
15 put in a position to bear any risk whatsoever.

16 We are not partners in this endeavor and the
17 end game offers no tangible benefit for us.

18 In any case, our view is that this
19 project constitutes a private nuisance in that
20 we will experience a loss of quiet enjoyment
21 of our property, whether related to noise and
22 activity during construction or more

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1 permanently the aspects of lighting, security,
2 privacy, and traffic. As a result we find
3 ourselves in an undesirable and untenable
4 situation, but one not without resolution.
5 You can deny this application as currently
6 presented and protect the citizens whom you
7 serve by requiring the necessary revisions to
8 ensure that we may coexist unencumbered by
9 commercial interests, as we have for so many
10 years.

11 I thank you for your time and
12 attention.

13 MS. BROCK-SMITH: Good evening,
14 Chairman and members of the Commission. My
15 name is Cynthia Brock-Smith. I live in the
16 2900 block of Fort Baker Drive, directly
17 behind Block 4 and diagonally across from
18 Block 1 of this development.

19 I endorse the comments of my
20 neighbors, so I won't repeat many of the
21 things that they have said. I agree that the
22 traffic study is flawed, that the buffer zone

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1 is not adequate.

2 I want to pay closer attention
3 though to the issue of the condition of the
4 slope between Fort Baker Drive and the Skyland
5 development, because I think it has a direct
6 impact on the decisions that you're going to
7 make here today as part of the Commission's
8 decision on the PUD.

9 This filing has a particular
10 impact on the property known as God's Dump.
11 It was a property that was used as an illegal
12 dumping operation in the 1970s by Andrew God
13 and the Northgate Corporation. This is part
14 of the wooded buffer zone that's currently
15 between the homes on Fort Baker Drive and the
16 Skyland property.

17 Apparently, the city gave the
18 permission for the owners to fill the area,
19 including Austin Street which is a paper
20 street that runs between Fort Baker Drive and
21 Skyland. Originally it was an illegal dump.
22 They were dumping Metro debris and other

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1 hazardous materials.

2 The illegal dumping operation and
3 movement of the earth in this area caused
4 damage to some of the properties on Fort Baker
5 Drive, and an injunction was filed, a consent
6 decree issued and the project was eventually
7 abandoned as my neighbor has explained to you.

8 One of the things I notice as a
9 part of the consent decree, Mr. God was
10 supposed to remove the fill and regrade the
11 area. And it doesn't appear that that's been
12 done, and it's caused major erosion problems
13 over the years.

14 A natural underground spring was
15 covered up by this dumping. And as a part of
16 the consent decree, it was indicated that if
17 that spring was uncovered, there were certain
18 mitigation that should take place by the
19 Northgate Corporation to avoid any further
20 erosion or water damage to the adjacent
21 properties.

22 The city stood on the sidelines in

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1 the 1970s while an illegal dump operation
2 decimated what was a forest behind Fort Baker
3 Drive and turned it into this dump. Mature
4 trees were removed, resulting in constant
5 erosion problems that persist today.

6 The George Washington University
7 geology survey of this property indicated that
8 trees were being cut down along the sides of
9 the ravine along Fort Baker Drive with no
10 evidence that the tree stumps would be
11 removed. The report suggested that the stumps
12 of these trees as well as the underbrush would
13 decompose, leaving behind cavities in the
14 earth which would become sinkholes and would
15 be conducive to beginning soil slump and
16 landsliding.

17 That is exactly what has happened
18 over the years and continues to happen, and in
19 some places the natural spring has been
20 totally covered up by landslides and forest
21 underground. I've heard from the applicant
22 that this is just rainwater runoff. And in an

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1 interview of the residents who have been there
2 for 30 years indicate that they used this
3 natural spring for fresh water 50 years ago.

4 So it's still there and it's still
5 causing some issues on the property. Although
6 it may not be exactly on the Skyland property,
7 I think movement of the earth between Skyland
8 and Fort Baker would cause additional
9 problems.

10 The adverse impacts during the
11 activity on the property behind Fort Baker
12 Drive during the 1970s caused considerable
13 damage to some homes, precipitated flooding in
14 the streams. It caused erosion on the hill
15 and the water table to rise, and that is the
16 cause of some of the flooding I think that
17 some of the homes on Akron Street experience
18 even today.

19 This area leads directly through
20 the property lines of Fort Baker on the steep
21 slope where the foundation of the big box was
22 originally intended to be constructed. It

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1 should never have been considered for
2 development and should not be developed now.

3 I endorse the original concept of
4 renovation of this property as a retail
5 shopping center. I participated in some of
6 the charrettes and a lot of the meetings with
7 the developers. I raised issues with the city
8 as well as with representatives of the
9 developers early on about the issues connected
10 with this slope and potential damage to homes
11 on Fort Baker Drive. And I was always waved
12 away with, "Oh, our engineers will take a look
13 at that. We'll make sure that there won't be
14 any damage." I'm not comfortable with that.

15 The expert testimony presented by
16 the Department of Environmental Services in
17 the 1970s on how the landfill area on God's
18 Dump would adversely impact adjacent
19 properties was made a part of that record at
20 that time.

21 While I realize that the
22 environmental impact statements are prepared

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1 later in this process, I am concerned about
2 the history. And that history will repeat
3 itself, and additional damage would come to
4 these homes when this property is rezoned from
5 residential to commercial.

6 In closing, I join my neighbors in
7 opposing the project. I think the size and
8 scope of this project is much larger than
9 originally envisioned when the concept was
10 brought to the Hillcrest neighborhood.

11 Implementation of this plan as currently
12 proposed would tread on my rights and the
13 adjacent property owners' rights. Why should
14 I lose my home so the rest of the community
15 will enjoy the amenities that we all surely
16 deserve? I support bringing new amenities to
17 the Hillcrest area. I just don't support them
18 at the cost of losing my home.

19 I urge you to make a decision that
20 will protect our interests, as well as allow
21 the developer to go forward without doing any
22 more damage to these properties.

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1 Thank you.

2 MR. SULLIVAN: Thank you.

3 I'd like to sum up and just point
4 out that we believe the PUD application has at
5 least three major problems. First being
6 traffic, and I won't go into detail there but
7 you have the testimony of our traffic expert.

8 The second is the inconsistency
9 with the Comprehensive Plan. And I would
10 break this out into really three separate
11 sections.

12 There's the general provisions of
13 the Comprehensive Plan which talk about what's
14 desired for Skyland specifically. And the
15 overwhelming weight of those sections talk
16 about something that is just retail. There's
17 some hint of a residential component in a
18 description of the map. But every specific
19 section that talks about Skyland, and there's
20 four or five of them, talk about community-
21 scale retail center or the need for retail,
22 never mentions housing or big box retail.

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1 The second section and third
2 section are the very specific provisions
3 related to Fort Baker Drive, which are the
4 soil erosion issue and the requirement for a
5 suitable visual, sound and security buffer.

6 Now, I'm sure you're familiar with
7 the principle of statutory construction that
8 says when you have a statute that has
9 different provisions that are in conflict,
10 these specific provisions dominate over the
11 general provisions. And we have here the two
12 most specific provisions. And the provision
13 for the buffer may be the most specific
14 provision in the Comprehensive Plan as it
15 relates specifically to these four homes. So
16 I think that's the major inconsistency, and
17 that's what we're talking about is the visual
18 impact.

19 And if I could on that point
20 briefly just ask a question of Mr. Cole.
21 There was some confusion about whether the
22 community has seen enough renderings or enough

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1 pictures, and that they don't really have an
2 idea of what this is going to look like. And
3 maybe you could help explain that, what some
4 of those concerns are.

5 MR. COLE: Well, with regards to--
6 I wish I had some, I do have pictures. But
7 anyway, basically from our homes, our
8 perspective from our vantage point we're going
9 to basically see a wall.

10 I respectfully reference Ms.
11 Steingasser who last week mentioned that the
12 wall with its trees or whatever covering it,
13 would have a bucolic appearance. And I --

14 MR. SULLIVAN: I believe that was
15 the architect. Sorry.

16 MR. COLE: No, I'm pretty sure it
17 -- I wouldn't forget that. But nevertheless,
18 even if it were the architect and I misspoke,
19 I apologize.

20 But bucolic, I had to actually
21 look it up, but it means pastoral and more of
22 a natural nature appearance. It doesn't

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1 become more bucolic than what we have back
2 there right now. So it's basically -- it
3 doesn't really add up.

4 The other thing that's very
5 important that we think is essential to this
6 whole analysis, which we haven't been
7 permitted authority to undertake at this
8 point, is the balloon test.

9 At, I guess, the first hearing it
10 came up and I think it was Mr. May, I'm not
11 sure, but someone basically brought it up.
12 Take some pictures to show what the views and
13 vistas would be from the various Fort Baker
14 homes. Conveniently, the developer decided to
15 take one picture from W Street at the
16 intersection of Fort Baker and W, which didn't
17 give any perspective from our particular
18 homes.

19 We would contend that the balloon
20 test would be a definitive viewpoint or
21 vantage point of what the visual impact would
22 be, not only of our perspective from our

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1 particular homes to the tops of the big box
2 building, but also more importantly it would
3 also give the perspective of what anyone on
4 top of that roof would see peering down on our
5 homes. And also with the lighting that will
6 be atop the parking deck as well, or the
7 rooftop parking as well.

8 So those are just some things that
9 we think we should still be allowed to, I
10 guess, enter into the record at some point
11 since it wasn't done by the developers.

12 It's also pretty interesting that
13 we've been forced to come out of our pockets
14 to foot the bill for all of this. We're more
15 than willing to do it because we have to
16 protect our interests. But I think at the
17 very least, we should be allowed to do these
18 types of tests and studies to make sure that
19 our interests are protected.

20 MR. SULLIVAN: Thank you. I'll
21 jump back to the third major problem with the
22 application, and that's the public benefits.

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1 The annotated table required by
2 Section 2403.11 says that the public benefits
3 offered must be superior in quality and
4 quantity to typical development of the type
5 proposed. And I believe the ANC asked for a
6 breakdown of the difference between, as Mr.
7 Jenkins said, what they're obligated to do
8 anyway and what they're not obligated to do.
9 And nobody's ever seen that.

10 Particularly there's the Green
11 features that make up more than half of the
12 \$9.2 million. DDOE identified them "as
13 required." We can take that off the list if
14 that's the case.

15 The bus commuter store is listed
16 for \$250,000 and it came out in the last
17 hearing that that's not money expended by the
18 applicant; that's a DDOT budget and it's not
19 confirmed in their budget. It's not
20 guaranteed; we don't even know if the funds
21 are there. But we know the applicant's not
22 paying them, which calls into question really

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1 all the numbers on this sheet. I don't know
2 if that applies also to the transportation
3 infrastructure and the public space
4 improvements, and maybe it's impossible to
5 know. Because any funds that the applicant
6 expends they could end up getting from the
7 city anyway, because the project is
8 subsidized. So I think there's an issue with
9 those public benefits.

10 Also, the build-out subsidy. It's
11 not unusual for a landlord to subsidize build-
12 out and then take it back in rent. I don't
13 know that that's really a \$500,000 benefit.
14 The contractor alone fund \$300,000; that's not
15 a payment of \$300,000 to anybody. That's a
16 payment to a contractor for services rendered,
17 albeit a little sooner than they would get it
18 under the draw.

19 In closing, I just want to say we
20 appreciate all the comments from the
21 supporters of the project and their opinion
22 that this issue should be resolved as well

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1 with these homes and Fort Baker Drive.

2 I think the applicant -- well, I
3 don't know what the applicant thinks. But if
4 they did think this was a foregone conclusion,
5 I can see how they would think it's not really
6 in their interest to try to resolve the issue
7 with the Fort Baker Drive neighbors. And
8 that's why the Fort Baker Drive party needs
9 the Zoning Commission.

10 It is in your power to cause the
11 applicant to cause such a resolution with my
12 clients. And without your help at this point,
13 we're at the mercy of the developer. There
14 may be a WalMart the distance to the Tax Court
15 building away from my clients. That's not a
16 win/win for us. It's too much to lose. So we
17 respectfully request that you hear our
18 concerns. Thank you.

19 CHAIRMAN HOOD: Okay. I want to
20 thank this panel. I think from my standpoint,
21 before I start talking about amenities or
22 anything else, I would tell you I'm very

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1 concerned about some of the comments that I've
2 heard. I will tell you I'm sitting here
3 grappling with how to proceed. Because I can
4 tell you, as my colleagues know, previously
5 we've had houses, you know people with
6 investments in their houses, that means a lot,
7 at least to this Commission and I believe to
8 my colleagues also. How do we work that out?

9 The city and I think some citizens would like
10 to see that. But then those are those
11 homeowners who live there.

12 We've had one particular case, I'm
13 just going to say this, where I asked the
14 developer to go back and save this gentleman's
15 house. Because that means a lot. I mean, I
16 put myself in that position and I think a lot
17 of times we often do that up here.

18 So even before I get to the
19 amenities, I'm having a problem with something
20 I think Mr. Puckrein, when he showed me that
21 picture about how close it's going to be, I'm
22 having some issues there. How do I get around

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1 and resolve it, I'm not sure yet. I'll be
2 frankly honest.

3 And Ms. Schellin, I will tell you
4 that if this Commission is still here, what we
5 need to do when we deliberate is have this at
6 a meeting where we don't have much. Because I
7 think this is going to take a lot of
8 discussion, a lot of conversation, and it's
9 going to take some time.

10 MR. SULLIVAN: Excuse me, Chairman
11 Hood, if I --

12 CHAIRMAN HOOD: I'm talking to my
13 Commissioners now.

14 MR. SULLIVAN: All right.

15 CHAIRMAN HOOD: You turned it over
16 to me but if you want to take it back over,
17 I'll turn it back over to you.

18 MR. SULLIVAN: Thank you, I
19 appreciate it.

20 We were going to ask if the record
21 could be held open to do a balloon test at our
22 expense, and hopefully that would be helpful

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1 to you.

2 CHAIRMAN HOOD: Mr. Sullivan, we
3 haven't even gotten to that point, but you
4 know what, we might --

5 MR. SULLIVAN: Just while you're
6 on the subject, I thought I'd mention it.

7 CHAIRMAN HOOD: Let me just say
8 this, let me help you out. We might ask the
9 applicant to do that, but since -- and I think
10 I've heard Mr. Cole mention how the burden has
11 been on them about retaining legal counsel.
12 And I know my colleague has already asked for
13 a perspective, but as was mentioned, we only
14 got one side of it. We may need that whole
15 view and I don't know if we got that. Mr.
16 Tummonds I'm sure will let us know if we
17 already have that and he can direct us to
18 that. That may be something that we may ask
19 for. But let's just wait and see how this
20 plays out.

21 MR. SULLIVAN: Thank you.

22 CHAIRMAN HOOD: But anyway, I will

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1 tell you that gives me great caution and pause
2 from especially the slide that I saw. But let
3 me do this.

4 Mr. Puckrein, can you put back up
5 the slide where you showed me -- I think it
6 looked like there was a hole in the ground?

7 But let me ask Mr. Cole and maybe
8 Ms. Smith and others, what's going on over
9 there now? I think I know, but what's going
10 on over there now on this site?

11 MR. PUCKREIN: It's still in the
12 state it was back in 1979 when it was an
13 unengineered dump site. And that's why when
14 the arborist went to drill, she couldn't
15 drill. Because there's cement holes and
16 pockets all over the place. Nobody goes back
17 there, really.

18 CHAIRMAN HOOD: Okay. That's
19 their part, I understand that; we're going to
20 get there. But I mean on the site of the
21 proposal, what's going on over there now?

22 MR. PUCKREIN: You're talking

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1 about on the Skyland site?

2 CHAIRMAN HOOD: The Skyland site,
3 right.

4 MR. PUCKREIN: As best we know,
5 it's fenced in. We've been trying to get our
6 balloon specialist over there so we could do
7 the balloon test. What we understand --

8 CHAIRMAN HOOD: So it's fenced in?

9 MR. PUCKREIN: -- the city's got
10 it in lockdown.

11 CHAIRMAN HOOD: But it was fenced
12 in some time ago? Was there an Autozone or
13 some type of --

14 MR. PUCKREIN: Yes. But that was
15 recessed back. That is where Skyland used to
16 be. What the developer is talking about is
17 moving it forward closer to our property.

18 CHAIRMAN HOOD: I understand that
19 part; I understand that part. But I just want
20 to know is there any activity going on on the
21 site now?

22 MS. BROCK-SMITH: Can I speak to

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1 that? If you're talking about what's actually
2 -- any commerce going on, there's the Autozone
3 that's still open, there's a CVS, there's a
4 laundromat, there's a liquor store, there's an
5 abandoned Post Office, a Murray's Steak House.

6 But all of those are around in a
7 circle that's not in close proximity to our
8 homes. So right now it doesn't really impact
9 us. The current activity, and there's
10 activity from early in the morning until at
11 least 10:00 or 11:00 at night, it doesn't
12 impact us because it's not as close as this
13 development is planned.

14 CHAIRMAN HOOD: Okay. And that
15 was my question because I'm trying to make
16 sure I have my orientation correct.

17 MS. SIBERT: Commissioner Hood,
18 may I add a little perspective to that? The
19 Post Office that operated there frequently had
20 loading and unloading throughout the course of
21 night and day. While we could hear that sound
22 at 2:00 in the morning where there was no

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1 other sound to compete with it, it seemed a
2 distant sound. That's how far back the Post
3 Office was set. So with all of their big
4 trucks coming in loading and unloading, we
5 basically didn't hear much of that activity
6 because the setback was so far from our homes.

7 CHAIRMAN HOOD: Help me with my
8 orientation. The Post Office, and I don't
9 know if you have a site plan in front of you,
10 maybe Mr. Sullivan could help -- would it be
11 in relationship to Block 1, 4, or 3?

12 MS. SIBERT: Block 5.

13 CHAIRMAN HOOD: Block 5? The Post
14 Office?

15 MS. SIBERT: It's between 4 and 5.

16 The depiction that Gary Puckrein had of the
17 man standing next to a house is my house, and
18 directly behind that is Block 4. And the Post
19 Office would kind of be between 4 and 5.

20 CHAIRMAN HOOD: Okay. I've got
21 you. No, you can just tell me, I have it
22 open. Actually, I'm on page 33; I think we

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1 may be on the same page; 35? Turn your
2 microphone on.

3 MS. SIBERT: If you look at page
4 35 and you look at Block 5, if you move down
5 to where the arrow stops almost, that is
6 directly behind my home.

7 CHAIRMAN HOOD: Okay.

8 MS. SIBERT: And so the other
9 homes are situated behind Block 4 and -- I'm
10 sorry, this says Block 4. Oh, yes. And Block
11 1 at the very last house.

12 CHAIRMAN HOOD: I guess where I'm
13 going is when the Post Office and those other
14 properties, which Ms. Smith said is kind of
15 far away, existed or exists now -- is there a
16 fence or something? What's stopping me from
17 coming over to your street; what's stopping
18 me?

19 MS. SIBERT: Well, when the Post
20 Office was in operation there was a fence
21 there. But also it was quite a distance. I
22 mean, you could get to my home from there, but

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1 it was quite a distance. It wasn't just like
2 getting to the top of the hill and looking
3 over and seeing my home.

4 I would say it was probably, just
5 a rough measurement, 60 or 70 feet from the
6 top of the hill to where the end of the Post
7 Office parking lot -- where the asphalt began,
8 not the physical building, but the asphalt
9 behind the Post Office began.

10 CHAIRMAN HOOD: Okay. Mr.
11 Cochran? Is it Cochran? Puffman?

12 MR. PUCKREIN: Puckrein.

13 CHAIRMAN HOOD: Puckrein? I got
14 that wrong.

15 MR. PUCKREIN: That's all right.

16 CHAIRMAN HOOD: Mr. Puckrein. How
17 do you spell your last name, Mr. Puckrein?

18 MR. PUCKREIN: P-U-C-K-R-E-I-N.

19 CHAIRMAN HOOD: Mr. Puckrein.
20 Okay. Can you go back to the one where --
21 what is the name of the place, God's Dump?

22 MR. PUCKREIN: God's Dump? Yes.

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1 CHAIRMAN HOOD: That's spelled
2 with a small G, but anyway, can you go to the
3 -- and what is it called again?

4 MR. PUCKREIN: God's Dump. It was
5 named after Andrew God so they called it God's
6 Dump.

7 CHAIRMAN HOOD: Okay. There was a
8 picture where you showed where your house was.

9 MR. PUCKREIN: Oh, this one here.
10 That's my house right here.

11 CHAIRMAN HOOD: Okay. Help me
12 understand, to your knowledge, where is the
13 wall going to be? And I see where your house
14 is.

15 MR. PUCKREIN: Yes.

16 CHAIRMAN HOOD: That's your house
17 in the picture?

18 MR. PUCKREIN: There's no wall.
19 In the original plan my understanding was
20 there was going to be some sort of retaining
21 wall somewhere along here. I think it was in
22 the original plan about 100 feet from my home.

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1 CHAIRMAN HOOD: You might want to
2 stand -- I know that's difficult, turning your
3 back.

4 MR. PUCKREIN: Yes. So I think in
5 the original plan it would have been --
6 somewhere along here would have been where the
7 retaining wall was going to be.

8 CHAIRMAN HOOD: Okay. And Mr.
9 Puckrein, you mentioned in your testimony that
10 -- I don't know whether you said your houses
11 are already on stilts or will be on will
12 stilts? I'm not sure what I heard.

13 MR. PUCKREIN: So what happened
14 was the side of my house, the garage, was
15 falling out. It had enormous cracks in it.
16 We have cracks in our living room that goes
17 from one end of the living room to the other.

18 In the bathroom, the tile has pulled away
19 from the tub. We were going to lose the
20 house.

21 So we called in some engineers who
22 put in something called helical piers; they're

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1 basically stilts. And so the house moves, it
2 shifts all the time on these piers.

3 And part of the challenge is we
4 got a 50 year or 100 year, I forget, guarantee
5 from the engineer. But the engineer said if
6 they go back there and start compacting,
7 there's no guarantee anymore. So we lose the
8 guarantee that we have on our houses right
9 now.

10 So that's part of the issue that
11 we're talking about is that by their very
12 action they eliminate a guarantee that we have
13 that we can go back to that engineer and say:
14 You didn't do the work properly; you've now
15 caused these damages to our homes.

16 CHAIRMAN HOOD: Are you the only
17 person to have that issue?

18 MR. PUCKREIN: All of us.

19 CHAIRMAN HOOD: Everybody has that
20 same issue?

21 MR. PUCKREIN: Everybody's got the
22 same issue. Because what happened was when

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1 Andrew God -- what he did was he dumped on
2 that stream and moved the water. And so what
3 I think was also being said to you was not
4 only did he move the water, he cut down trees
5 and didn't remove the stumps. So he created
6 holes in the ground where water could collect.

7 On top of that, he didn't compact the soil;
8 he just dumped things back there.

9 So what's happened is that the
10 water has shifted and it's eroding the land
11 around our homes. And in order to stabilize
12 that we've had to put them on stilts.

13 CHAIRMAN HOOD: So how many houses
14 are we talking about, six?

15 MR. PUCKREIN: Four.

16 CHAIRMAN HOOD: Four homes?

17 MR. PUCKREIN: Yes. And that's
18 what we've said to the developer from the very
19 beginning. This is not just normal land back
20 here. There's a problem.

21 And quite honestly, the city
22 allowed -- if you go back and read the

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1 testimony. I know Kenneth Davis has done a
2 lot of work on collecting this information.
3 But these residents went to the city back in
4 1974 when he started doing that dumping. And
5 for 5 years the city didn't do anything until
6 the houses started to fall down, and they had
7 to bring litigation.

8 And part of what we think is, we
9 actually think there was a consent decree
10 between the landowner Andrew God and those
11 four houses such that you can't even develop
12 back there, which is what I was alluding to
13 originally. We are actually searching the
14 records now for that consent decree. Because
15 we think that the city and the developer
16 Andrew God entered into an agreement not to
17 develop on that land. That's why it's been
18 like that all these many years, because of
19 that agreement between Andrew God and the four
20 houses.

21 CHAIRMAN HOOD: Okay. Let me open
22 up to my colleagues. The hour is getting late

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1 and I would like to finish tonight, so let me
2 open ot up to my colleagues.

3 Commissioner Turnbull?

4 COMMISSIONER TURNBULL: It sounds
5 like a script for a movie.

6 I just have one question for Mr.
7 Sullivan, and it's for Mr. Mehra.

8 You've gone through a large
9 analysis going back and looking at
10 Gorove/Slade's original analysis of the site,
11 with the traffic analysis. And that's Exhibit
12 19 and specifically Tab D.

13 Do you have a submission? I mean,
14 there's tables; you reference Table 6 and the
15 others. Do you have a submission that -- I
16 mean, you went through a lot of refutation,
17 refuting what they said. I'm just wondering
18 is there -- the summary, the conclusions they
19 made -- do you have a corresponding document
20 that sort of we could be looking at side-by-
21 side?

22 MR. MEHRA: I can provide that for

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1 sure.

2 COMMISSIONER TURNBULL: Would you?

3 I think that would be good for us to be able
4 to have the original analysis and then your
5 sort of take on this. I think it would be
6 good for us to be able to compare that.

7 Thank you.

8 CHAIRMAN HOOD: Mr. Turnbull, let
9 me just say what we've also done is ask Mr.
10 Mehra, has your analysis been turned over to
11 DDOT? Has Mr. Jennings had the opportunity to
12 -- I think it's Mr. Jennings?

13 MR. MEHRA: I believe the report
14 was submitted to you. I guess Mr. Sullivan
15 can answer that better than me.

16 CHAIRMAN HOOD: Has his findings
17 been turned over to DDOT?

18 MR. SULLIVAN: Not with the
19 simulation, but the initial findings that we
20 filed on December 10.

21 CHAIRMAN HOOD: Okay. So what I
22 have here in front of me tonight --

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1 MR. SULLIVAN: Yes.

2 CHAIRMAN HOOD: -- has been given
3 to DDOT?

4 MR. SULLIVAN: Jeff has seen that,
5 yes.

6 CHAIRMAN HOOD: Okay. All right.

7 COMMISSIONER MAY: I just wanted
8 to comment that we have this submission from
9 December 10 which does summarize sort of the
10 conclusions. But it doesn't have many of the
11 facts that you were citing in your testimony.

12 I was trying to flip through
13 things and follow things in the report and see
14 where the numbers were different and so on.
15 And I just couldn't keep up. So it would be
16 helpful I think to have something a little bit
17 more specific than what's in here.

18 MR. MEHRA: I think as
19 Commissioner Turnbull asked, I'll put together
20 all the numbers that I mentioned, put that in
21 the report and also supply all the
22 backgrounds, the tables and the exhibits that

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1 I referenced here.

2 COMMISSIONER TURNBULL: I think
3 that would be good. Because I was kind of
4 doing the same thing, listening to your
5 comments and looking at the original report
6 and trying to go back. And I couldn't keep
7 up. I was amazed at how you were going back
8 and looking at it. So I think that kind of a
9 summary from you would very worthwhile.

10 CHAIRMAN HOOD: Additional
11 questions?

12 COMMISSIONER MAY: Absolutely,
13 yes.

14 Let's talk first about the
15 inconsistency with the Comprehensive Plan, as
16 you testified. I'm looking at the Office of
17 Planning's report and it refers to this
18 development very specifically, and calls it
19 out for a multi-neighborhood retail. And you
20 kept referring to it as community-scale
21 retail.

22 And the definition of multi-

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1 neighborhood retail, and now I've list my
2 reference to it, which specifically calls out
3 this development does refer to additional
4 housing as a component within a multi-
5 neighborhood business center. And I'm
6 wondering why that's not consistent. I mean,
7 it seems to me that this is consistent with
8 that objective of the Comprehensive Plan.

9 MR. SULLIVAN: Right. That
10 definition of multi-neighborhood center also
11 says their service area is typically 1 to 3
12 miles. It says the centers are generally
13 found at major intersections and along key
14 transit routes. They include supermarkets,
15 general merchandise stores, drug stores,
16 restaurants, specialty shops, apparel stores,
17 and a variety of service-oriented businesses.
18 These centers may also include office space
19 for small business, although their primary
20 function remains retail trade. So, yes.

21 Again in the next paragraph it
22 does -- I don't think multi-neighborhood means

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1 residential. I think it means more than one
2 neighborhood. But it does say mixed-use
3 retail development, and that these centers
4 should be encouraged to provide new retail and
5 service and additional housing, and it does
6 mention Skyland.

7 My point was that was one
8 provision. And I could go through five or six
9 others that specifically only refer to retail.

10 And the term --

11 COMMISSIONER MAY: But they don't
12 say to the exclusion of housing. I mean, why
13 is it the fact that it doesn't mention housing
14 every time but it mentions retail --

15 MR. SULLIVAN: It doesn't mention
16 industrial either, but that's --

17 COMMISSIONER MAY: Well, it never
18 mentions industrial.

19 MR. SULLIVAN: Right. But I mean,
20 these other provisions --

21 COMMISSIONER MAY: They're not
22 proposing industrial.

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1 MR. SULLIVAN: I'm just saying the
2 weight of -- the weight, I think. The weight
3 of these six provisions, five of them don't
4 contemplate housing and they contemplate a
5 certain scale of retail --

6 COMMISSIONER MAY: Okay. I'm not
7 sure --

8 MR. SULLIVAN: -- that doesn't
9 include a WalMart.

10 COMMISSIONER MAY: -- the
11 Comprehensive Plan is supposed to be read in
12 such a way that we quantify the number of
13 mentions of a particular type of use, and
14 that's how we evaluate what's appropriate or
15 what's not. It's mentioned five times versus
16 four times or, you know. If it's mentioned
17 here, it seems to me that it's not hard to
18 conclude that is consistent with the
19 Comprehensive Plan.

20 MR. SULLIVAN: I think you can
21 make the Comprehensive Plan say almost
22 anything you want it to say. So I think there

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1 is a balancing of provisions, and there's five
2 provisions that talk only about retail.

3 Regarding the more specific
4 provisions, though, the soil erosion and the
5 buffer, the visual impact --

6 COMMISSIONER MAY: I'll get to
7 those.

8 MR. SULLIVAN: I rank those much
9 higher than this one.

10 COMMISSIONER MAY: I'll get to
11 those.

12 Let's also then talk about the
13 specific item which talks about Skyland, which
14 refers to its redevelopment as a "town
15 center." And I don't know that a town center
16 is specifically defined in the Comprehensive
17 Plan, but we're pretty familiar with the
18 notion of what a town center is. And a town
19 center is usually not limited to retail use.
20 It usually does include mixed-use. And so I
21 see further consistency here in this
22 definition in this paragraph that refers to

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1 Skyland.

2 MR. SULLIVAN: Right. And I would
3 just point out that I understand the word town
4 center is in there and it's followed up by the
5 explanation with more than 275,000 square feet
6 of leasable space.

7 COMMISSIONER MAY: Right. And
8 there's 315-some thousand square feet of
9 retail space that's part of this.

10 MR. SULLIVAN: That's right. So
11 the town center doesn't mention --

12 COMMISSIONER MAY: Okay. It
13 doesn't say specifically how much housing
14 might be involved, but it does talk about it.

15 I am curious about when housing
16 entered into the picture in terms of this
17 development. And so I'm asking this question
18 now expecting that the applicant will
19 hopefully in rebuttal be able to talk about
20 when housing entered into the discussion.
21 Because if the Comprehensive Plan was being
22 written at a certain time and it was really

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1 only envisioned to be a retail center, that's
2 one thing. If it was in fact in 2006 or 2005
3 when the meetings were happening being
4 discussed as a mixed-use development with
5 housing as a component of it, I think it's
6 harder to make the argument that this is
7 inconsistent. So I'll let them answer that.

8 I am very concerned about the
9 issues of erosion and the stability of the
10 homes. And it's I think a very standard thing
11 for a PUD to include protections to satisfy
12 the concerns of the neighboring homeowners.
13 And I think that this is probably a really
14 exceptional case given the erosion issues and
15 the instability of the soil, and the fact
16 there's already a proven issue with those
17 homes.

18 So I'm hoping the applicant will
19 be able to address those concerns in the
20 appropriate technical and legal manner to be
21 able to address how the development might
22 impact the homes. Again, I would ask them to

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1 answer that.

2 I also will ask the applicant to
3 talk more about the buffer. Because I've seen
4 bits and pieces of how this notion of a buffer
5 is being implemented here. And they gave us a
6 good diagram on the hearing on February 4,
7 which showed a section through the property
8 and showed where we have 72 feet of setback to
9 the building, and so on. But I think that it
10 would be good to truly quantify what's there
11 now versus what they intend to do in terms of
12 planting, in terms of soil stabilization, in
13 terms of security fencing because it also
14 mentions security as part of the buffer.

15 I think that the issue of
16 providing a buffer -- I just don't have a good
17 feeling yet of what the buffer really is to
18 know whether you're correct and that there's
19 not enough of a buffer, or their assertion
20 that the buffer has been provided. So
21 hopefully they'll be able to provide more
22 information on that.

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1 Let's talk about the height of the
2 buildings for just a second. The way the site
3 is right now, the majority of the site is
4 currently zoned C-3-A. And a portion of the
5 site is being rezoned from R-5-B to C-3-A; R-
6 5-B according to the map I have in here.

7 MR. SULLIVAN: Okay. I think it's
8 R-5-A.

9 COMMISSIONER MAY: Okay. Well,
10 we'll check that. Yes, it says R-5-B in page
11 17 of the applicant's submission. I assume
12 that that's correct. We'll check that and
13 find out if in fact that's correct.

14 Did you do any examination of what
15 would be possible in R-5-B in that area in
16 terms of the potential development, the height
17 of the buildings, if it were to stay R-5-B and
18 not be rezoned as part of the PUD?

19 MR. SULLIVAN: No. No, we did
20 not.

21 COMMISSIONER MAY: Okay. I think
22 that's worth looking into, because I just did

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1 some very quick investigation of that. And if
2 you look at the height, the existing grade on
3 the property of 270 feet above sea level or
4 whatever, and you add the matter-of-right
5 height to that of 50 feet, you're talking
6 about 320 feet that could potentially be built
7 in an R-5-B zone.

8 And it would look even more
9 massive than that because the 50 feet is
10 measured from the front of the building, and
11 the front of the building would be at 270.
12 And the back of the building, the grade drops
13 off dramatically.

14 So you'd not only see the 50 feet
15 of legal height, but as the slope goes down
16 you'd see another 20 or 30 feet of building.
17 And that's within 15 feet of the property
18 line. That's what you could do as a matter-
19 of-right. And so you wind up with an 80 foot
20 wall 15 feet off the property line potentially
21 versus what you have right now which is a 29
22 foot building that's set 70 feet back at the

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1 big box retail.

2 I think that there needs to be
3 some understanding of what could be done as a
4 matter-of-right to understand why this is
5 being considered as a PUD. I mean, a PUD is
6 supposed to bring better development than you
7 can get as a matter-of-right and something
8 that would be better for the neighborhood.

9 And I think that if you look at
10 some of those things, you might find that
11 maybe this is better than what could be done
12 as matter-of-right. Maybe it can't, but it's
13 an analysis that I think you might want to
14 undertake to understand that better.

15 This is also true for building
16 number 4. The backside of builidng number 4
17 is basically just the parking lot, or the
18 parking garage, parking structure which goes
19 up 20 or 30 feet above the grade there, which
20 is at 260 or 270, something like that. So
21 it's really only showing about 30 feet of
22 height instead of the extra 20 that could be

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1 built if it was R-5-B. I don't know how close
2 it is to the property line, but it could be a
3 lot worse.

4 MR. SULLIVAN: I thought it was a
5 four or five story building.

6 COMMISSIONER MAY: I'm going by
7 the spot elevations that are shown in the
8 plans. Maybe I don't have them correct; I did
9 this very quickly here.

10 COMMISSIONER TURNBULL:
11 Commissioner May, to help you out, I looked at
12 elevation 289.5. And the ground floor in all
13 those as 252.5; I believe that's 47 feet.

14 COMMISSIONER MAY: What was the
15 ground floor elevation?

16 COMMISSIONER TURNBULL: 252.5.

17 COMMISSIONER MAY: 252.5, and
18 that's actually 20 feet below the existing
19 grade?

20 COMMISSIONER TURNBULL: Right.
21 You're knocking off 18 feet or something.

22 COMMISSIONER MAY: Yes. So

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1 anyway, I don't pretend to know all the
2 answers but I think that it's something we
3 ought to understand about this. And maybe the
4 applicant wants to undertake some of that
5 investigation to sort of demonstrate what the
6 differences are. But this may be a lot better
7 than it could be in that way.

8 I think a couple of people
9 testified to the fact that these new buildings
10 would block the sunlight from reaching your
11 homes. Has there been any kind of analysis of
12 that, a sunlight analysis? Okay.

13 If that in fact is the case, I
14 think it would be very helpful to have that.
15 Because that is something we can take into
16 consideration. And sunlight studies are
17 things that we do see regularly. Okay.

18 I'm also a little concerned about
19 the lighting at night, and I think that that
20 is a real issue that the applicant should
21 address. I don't know that it's necessarily
22 going to be pushing a lot of a light up.

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1 One of the things that happens in
2 Green building is that they try very hard to
3 keep the lighting focused down and not
4 spilling out off the site. So I don't know if
5 they really are going to do that here or what,
6 but again, maybe the applicant can provide
7 more information in that area. But I am
8 concerned about that.

9 It's an issue that we face in the
10 Park Service all of the time, the neighboring
11 buildings with light spill. And so I'm
12 sensitive to that.

13 I think that's it for my questions
14 and talking.

15 CHAIRMAN HOOD: All right. Thank
16 you.

17 COMMISSIONER MAY: Did you want
18 to --

19 MR. COLE: I just wanted to
20 respond to the issue of the 20 feet that would
21 be basically shaved from the site to recess
22 the building, basically.

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1 Again, that goes to our issue with
2 the whole foundation. Because the fact of the
3 matter is once they get in there and start
4 excavating that site, it's going to impact our
5 foundations. And they mentioned a dynamic
6 compaction technique that we've had other
7 consultants tell us will not prevent our homes
8 from being damaged.

9 So in an effort to, I guess,
10 accommodate our initial desires that the
11 project be scaled back somewhat, the developer
12 basically said, "Okay. We'll recess the
13 property. We'll move the property back
14 another 35 feet," or whatever it was, "and
15 we'll sink the property 20 feet into the fill
16 material." Which from the beginning we
17 mentioned to them would be unacceptable
18 because of the risk that it would cause to our
19 homes.

20 COMMISSIONER MAY: Yes. I don't
21 know what to make of what that potential risk
22 is. But I think that, as I said, it's common

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1 to have a proffer from a developer about how
2 they're going to address the potential risks
3 to neighboring properties.

4 The more common one in a large
5 excavation that might be happening in a more
6 urban setting is the risks associated with
7 dewatering the property. They dig the hole
8 but when they dig the hole they have to pump
9 water away from it, so it causes settlement in
10 the surrounding homes. It's not uncommon to
11 have monitoring done and then regular
12 inspections and things like that to address
13 it.

14 So hopefully there can be some
15 sort of compromise on that, or some sort of
16 solution for that, I guess is the right word.

17 We shouldn't be compromising about the
18 protection of the homes.

19 COMMISSIONER TURNBULL: I would
20 just echo Commissioner May, your concern. I
21 think it's a significant -- I think levelling
22 the property, making it lower is in one way

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1 positive for the neighbors. And I, too, echo
2 Mr. Cole's concern about the damage to the
3 property.

4 So I think we'd like to see some
5 very specific plans from the developer as to
6 how they would want to protect those. I think
7 we need some clear indication ourselves that
8 the mitigation efforts are sufficient enough.

9 And I also echo your concern about
10 the lights. I think one of the things that's
11 been brought up is the whole amenity issue,
12 and the Green building versus what DOE
13 requires or whatever.

14 I'd like to have the amenity
15 package clearly defined more: What's
16 obligated; what is clearly an amenity; and
17 what is LEED; what you're going for for a
18 Green building or a Green site? I'd like to
19 have that defined.

20 I'd like to have that broken down
21 so we can really clear up. I think there's
22 been enough questions by a lot of the

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1 opposition that says, what are we really
2 getting? What's required and what are you
3 really giving the community? I'd like to have
4 that defined.

5 But I'd also like to talk about --
6 we've talked about this garage. I'd like to
7 see some indication of the lighting. I'd like
8 to see what they're doing for the light spill,
9 the light pollution on the neighbors, and what
10 they're really going to see. I'd like to see
11 what kind of mitigation efforts they're going
12 to do. And as you say, it's common on LEED
13 projects. It's one of the main objectives is
14 that you don't have the light spill.

15 So I think along with either the
16 balloon test looking, I'd like to see what
17 these people are really going to see. I think
18 we need a really clear picture as to what the
19 applicant's providing and what mitigation
20 efforts, and what it will really look like.
21 We really haven't had that. We asked for it
22 two hearings ago. We got a little bit last

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1 time, but I think we really need to go further
2 and really see that. So I would echo your
3 concern on those.

4 COMMISSIONER MAY: I'd be happy to
5 see more information on the heights of
6 buildings.

7 On the LEED issue, I don't recall
8 what's been put in testimony already or part
9 of the record, but it may well be that this
10 project is required to be LEED certified
11 because of District funding or something like
12 that.

13 COMMISSIONER TURNBULL: Yes.

14 COMMISSIONER MAY: In which case
15 I'd kind of crossed that one off on my list of
16 amenities to begin with.

17 CHAIRMAN HOOD: Okay. I will just
18 add, I know Mr. Tummonds had pointed us to the
19 Construction Management Plan. I want us to
20 refine that, especially when it comes to the
21 issue about the photo here and seeing that the
22 properties have already been permanently

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1 damaged.

2 And I don't know if that's already
3 been done, if it was in the plan. I actually
4 sat up here for a few moments while my
5 colleagues were talking looking for it, and I
6 may not have it in what I have here, but I
7 would like for us to go a little more along
8 that Construction Management Plan if there's
9 one. Because I think they said there wasn't
10 one, but then I think Mr. Tummonds said there
11 is one.

12 So I want to know, are we looking
13 at those four homes and seeing what the damage
14 is now versus what may happen after? Or are
15 we looking at maybe moving that line further
16 back away from the homes over? What are we
17 doing to protect the interests of those four
18 to five homes? I'm not sure; I think it's
19 four, but four to five homes. That's one of
20 the things I'm going to be looking for.

21 COMMISSIONER MAY: Mr. Chairman,
22 there is a provision I think, for before or

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1 after inspections, but it's a little vague on
2 the question of monitoring during
3 construction.

4 CHAIRMAN HOOD: Okay. And I know
5 in previous cases we have tightened that up,
6 and we've actually had those homes looked at.

7 And I think since the plan is
8 already out there, apparently from what I'm
9 being told by Mr. Tummonds, the plan is
10 already there. So we need to just tighten
11 that up a little bit and give those residents
12 some assurances to some point that if there's
13 damage that continues to go, which as I
14 understand from one of the residents that
15 their warranty will be voided if there's
16 building back there.

17 I just want to see. We need to do
18 discovery and go down that line a little bit
19 more with the Construction Management Plan.
20 That's kind of where I am.

21 Anything else you guys want to add
22 to that? Okay.

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1 Well, let's do this. Let's go to
2 the cross-examination first before we do
3 rebuttal and closing.

4 Does the applicant have any cross-
5 examination? Mr. Tummonds, you're on the
6 ball. After all that, Mr. Tummonds has got
7 one question. You're on the ball.

8 MR. TUMMONDS: This is to Mr.
9 Puckrein. You noted that the representatives
10 of the applicant had meetings with the Fort
11 Baker Drive residents where the issues of the
12 helical piers and structural problems with
13 your homes were raised.

14 Did the applicant submit a draft
15 Construction Mitigation Agreement to the Fort
16 Baker Drive residents specifically addressing
17 the Fort Baker Drive residents' construction
18 concerns prior to the public hearing on
19 December 10, 2009?

20 MR. PUCKREIN: The applicant gave
21 us a Construction Mitigation Agreement which
22 basically said, "Your homes are already

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1 damaged. We'll take some pictures. And if we
2 do any damage to them, then we will do
3 something about them." It didn't address the
4 fact that now our warranty is gone because you
5 have gone back there and dug.

6 And basically, our response to it
7 was we are not going to court, to follow you
8 in court to address damages done to our homes.

9 We don't have to do it now and we don't see
10 any reason why we have to take on the
11 responsibility of chasing you down due to
12 damages done to our homes.

13 So yes. You gave us a document
14 but it was pretty meaningless.

15 MR. TUMMONDS: I have no further
16 questions.

17 CHAIRMAN HOOD: All right. Thank
18 you, Mr. Tummonds.

19 Commissioner Richards? Okay. I
20 was about to call you Mr. Sullivan but I'm
21 sure that would have been the first time.
22 Okay. Let's do rebuttal.

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1 MR. TUMMONDS: I think that based
2 on the numerous questions that -- and I know
3 it's not what Commissioner Hood wants to hear.

4 But I think based on the numerous questions
5 and requests for information that Commissioner
6 May has asked for, Commissioner Hood,
7 Commissioner Turnbull, I think it would be the
8 most appropriate use of everyone's time is I
9 think we need to have another hearing.

10 And I think that in that other
11 hearing, we can provide that information.
12 There can be dialogue and Mr. Sullivan can
13 cross examine all the information we provide.

14 But I think that would be the most
15 appropriate mechanism where we can have a full
16 dialogue about the issues you raised.
17 Otherwise I think we're doing it all in
18 written submissions.

19 I think we could have the public
20 hearing at a time after we've -- we've already
21 talked about the need that we were going to
22 have another presentation to the ANC, to the

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1 Fort Baker Drive residents so they're aware of
2 the project that is being presented is being
3 voted on. I'm looking at Commissioner Hood.
4 But I think it makes sense that we should have
5 another public hearing.

6 CHAIRMAN HOOD: Okay. I think
7 that's a good -- let it be noted that Mr.
8 Tummonds set another hearing, not Anthony
9 Hood. Okay. Let's try to get schedules
10 together.

11 Ms. Schellin, if you could take
12 the lead on that?

13 MS. SCHELLIN: Did you have a date
14 to go before the ANC yet?

15 MR. TUMMONDS: I almost think that
16 realistically, with the amount of materials
17 we're looking to provide, I think we're
18 looking at a hearing date in April.

19 MS. SCHELLIN: Okay.

20 MR. TUMMONDS: So I think then if
21 we establish a hearing date in April, we can
22 work back and then that gives us plenty of

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1 time to work with the Fort Baker Drive
2 residents, the ANC, to have a --

3 MS. SCHELLIN: April 15.

4 (Whereupon, at 10:30 p.m. off the
5 record until 10:36 p.m.)

6 MR. RICHARDS: What about April
7 21?

8 MR. SULLIVAN: April 21? April
9 21, yes.

10 MR. TUMMONDS: We appreciate your
11 looking at a Wednesday, but April 21 would
12 work for us as well.

13 MS. SCHELLIN: Going once, going
14 twice.

15 CHAIRMAN HOOD: April 21 is the
16 date?

17 MS. SCHELLIN: It's a Wednesday.

18 CHAIRMAN HOOD: At 6:30?

19 MS. SCHELLIN: At 6:30.

20 CHAIRMAN HOOD: But it's going to
21 be a narrow scope hearing? Let's decide on
22 what all we want to be dealing with.

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1 MS. SCHELLIN: We need to set
2 deadlines for the actual documents being due
3 and what's being asked for. And other than
4 what's being asked for, if I'm correct, the
5 record will be closed for all other
6 submissions. So that means no one else can
7 submit anything. I was out of the room some
8 of the time but I did write down some things.

9 DDOT originally was going to
10 address -- they had some concerns that they
11 actually submitted a report this evening, and
12 asked that the record be open so that they
13 could submit -- they listed three items, I
14 think it was, in their report. So we would
15 want to leave the record open for them to
16 submit those items.

17 I believe that DIMPED was going to
18 submit tax and revenue values before versus
19 projected, somewhere along those lines.

20 Urban Forestry had also requested
21 that they be able to submit a small follow-up
22 report.

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1 Mr. Mehra is going to provide his
2 traffic summary or update it.

3 Mr. May asked for some more
4 information on the buffer being provided. He
5 was still a little unclear about what exactly
6 is being provided.

7 The Fort Baker group, if they have
8 it, there was some mention about the sunlight
9 blockage. So if there's been any studies,
10 they were going to provide those.

11 The applicant -- Mr. Turnbull
12 asked that they submit plans regarding
13 protection of the Fort Baker homes. And as a
14 follow-up, Mr. Hood asked about the
15 Construction Management Plan; does it protect
16 the interests of the Fort Baker Drive
17 properties if there's damage? So maybe a
18 combination there.

19 Mr. Turnbull also asked for the
20 lighting on top of the garage, exactly what
21 the Fort Baker neighbors will see, whether
22 that's a balloon study or some other way that

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1 they're going to show that.

2 COMMISSIONER MAY: Ms. Schellin,
3 can I interrupt? I think the balloon study is
4 a separate issue.

5 MS. SCHELLIN: Separate issue?
6 Okay.

7 COMMISSIONER MAY: It's just the
8 height. And the lighting is not limited to
9 the --

10 MS. SCHELLIN: Garage?

11 COMMISSIONER MAY: -- garage.

12 MS. SCHELLIN: Okay. So the
13 lighting in general of all the buildings.

14 And then Mr. Turnbull asked for
15 the amenity package to clearly define required
16 versus what's freely being offered, to clarify
17 what is actually required. And I think that's
18 it, or that's all I have.

19 CHAIRMAN HOOD: So with that
20 information, we'll be asking questions of
21 whomever we see appropriate, for any questions
22 that we may have. I'm just trying to

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1 structure the hearing.

2 We will not be taking public
3 testimony. But we will be asking questions of
4 the required ones. This is kind of unusual
5 but we will be asking questions of the
6 required ones who will make submissions that
7 we may have to ask the parties. The ANC and
8 the parties will be able to cross.

9 COMMISSIONER TURNBULL: Is the
10 applicant presenting the information we're
11 requesting in written form or are they going
12 to do a presentation?

13 CHAIRMAN HOOD: They're going to
14 do a small scale.

15 MS. SCHELLIN: Well, they have to
16 come back and do their rebuttal, and then
17 there's cross-examination.

18 CHAIRMAN HOOD: So let me ask you
19 this, Mr. Tummonds, do you envision doing that
20 in a rebuttal context?

21 MR. TUMMONDS: Sure. Our rebuttal
22 is subject to cross-examination, so yes.

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1 CHAIRMAN HOOD: That will make it
2 easier.

3 MR. TUMMONDS: The information, I
4 think if we do that two weeks out? Everyone
5 submits all the information --

6 MS. SCHELLIN: Well, we need to
7 have a time period for everyone to submit
8 because it's not just you guys. Fort Baker
9 people need to submit some stuff that, you
10 know, DDOT -- and then there needs to be two
11 weeks after that for responses there, too, for
12 the parties to be able to respond to those
13 submissions, the ANC respond to what you
14 submitted, you to respond to what Fort Baker,
15 ANC, whoever.

16 MR. TUMMONDS: And I think a
17 couple of other things that were mentioned was
18 the possible matter of right scenarios in the
19 buffer area. And we'd be interested in
20 submitting that too. I don't know if you care
21 who it comes from, as long as its there.

22 So one of the things the way Ms.

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1 Schellin mentioned it was, this is required
2 from this person. I think what's more
3 important is to say these are the general
4 issues that you want to address. Anyone can
5 submit them; we'll all have the same date to
6 submit them. People can respond two weeks
7 later. On the 21st we provide our rebuttal
8 and there's cross-examination.

9 Is that keeping with what you
10 want, Commissioner?

11 COMMISSIONER MAY: Yes. I think
12 that you have -- I mean, you still have to
13 make your rebuttal. And you can rebut pretty
14 much anything that was testified to here, so I
15 would certainly think you'd have some
16 flexibility in terms of what gets presented.
17 I mean, does that open the door for everybody
18 to present on everything? No, I don't think
19 so.

20 I agree the issues that were
21 addressed here tonight, I think you got most
22 of them. The only one thing is information on

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1 the soil stabilization, to provide the
2 construction techniques. I think that will go
3 with the idea of the Construction Mitigation
4 Agreement Commissioner Hood mentioned.

5 MR. TUMMONDS: It would be great
6 if we could actually come to an agreement
7 between now and then.

8 COMMISSIONER MAY: I agree.

9 CHAIRMAN HOOD: I think that's an
10 important point because there's a lot of time
11 between now and then. You might not reach an
12 agreement but some of those issues can be
13 hashed out. And instead of us spending four
14 hours here we may only spend two. Okay?

15 MR. TUMMONDS: Yes.

16 CHAIRMAN HOOD: Okay. So we're
17 all on the same page?

18 MS. SCHELLIN: We need to get
19 dates.

20 CHAIRMAN HOOD: Okay. Let me say
21 this, there's another issue we've asked ANC to
22 go back and --

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1 MS. SCHELLIN: Right. The ANC, to
2 narrow down their --

3 CHAIRMAN HOOD: -- narrow that
4 list of 21.

5 MR. RICHARDS: Right. And the
6 other thing is I asked the Deputy Mayor's
7 Office on the relative cost of the value of
8 the land after the rezoning. They said they
9 could get that but I didn't nail that down at
10 that point.

11 MS. SCHELLIN: That was on the
12 list.

13 CHAIRMAN HOOD: That was the first
14 thing she mentioned.

15 MS. SCHELLIN: That was the first
16 said.

17 MR. RICHARDS: Okay. Sorry.

18 CHAIRMAN HOOD: You were probably
19 working on dates when that was first
20 mentioned.

21 MR. RICHARDS: I probably was.

22 CHAIRMAN HOOD: All right. Let's

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1 get some dates.

2 MS. SCHELLIN: So given as much
3 time as possible -- let me back up here. All
4 of the parties will have until -- I'm assuming
5 everybody wants as much time as possible --
6 March 29 to provide the items requested. And
7 then each of the parties will have until April
8 12 to respond thereto.

9 Of course, the parties are the
10 only ones who can file anything at this point
11 because the record is closed for everyone
12 else. Parties are reminded that they need to
13 serve all other parties.

14 And everything is due by 3:00 p.m.
15 on those dates.

16 MR. RICHARDS: One other, we'd
17 like to meet with the Office of Planning on
18 that. Can you require that or can they
19 consent to that now?

20 MS. STEINGASSER: We're always
21 available to meet with you. Yes, sir. It
22 doesn't need to be required. We're happy to

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1 meet with you.

2 CHAIRMAN HOOD: And by the way, I
3 don't think I can require that. I don't think
4 we can do that. But thank you Ms.
5 Steingasser, you saved us.

6 MR. SULLIVAN: Mr. Chairman, I
7 have one other request too. It's mentioned a
8 couple of times the lawsuits, the two lawsuits
9 out there. And we're searching for that
10 information. It's in the archives and I'm
11 told maybe we'll have it in a few weeks.

12 To the extent that anything in
13 there is relevant, we'd like the opportunity
14 to submit it. And obviously you would make
15 that determination whether any of it is
16 relevant.

17 CHAIRMAN HOOD: I would actually
18 have to talk with our OAG to see what legal
19 ramifications we have, as far as it being
20 within our jurisdiction because we're doing a
21 zoning case. Anything else that happens in
22 the court may trump whatever we do anyway.

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1 So that's kind of where I am with
2 that. I don't know if the document -- you can
3 put it in the file, but I don't know if that
4 will be something we would look at to how we
5 will decide on this case.

6 MR. SULLIVAN: Understood. Okay.
7 Thanks.

8 CHAIRMAN HOOD: Is that it?

9 COMMISSIONER TURNBULL: Mr. Chair,
10 I just wanted to thank Commissioner Richards
11 when he talked about the ANC and Hillcrest
12 getting together. And I want to just bring
13 that up again that we talked about the
14 community organizations touching base with one
15 another. As the chair has mentioned before,
16 we like -- okay. All right. Good. Thank
17 you.

18 CHAIRMAN HOOD: Okay. So is
19 everything in order? We're all on the same
20 page? And again, for the record, Mr. Tummonds
21 we want to thank you for the great idea of
22 another hearing. Let the record reflect it

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1 was Mr. Tummonds' idea. But actually, I think
2 it was a very good idea.

3 So with that, this continuation
4 will be adjourned for the moment. I think we
5 will resume on --

6 MS. SCHELLIN: Now you're going to
7 ask me again. April 21, I believe it was.
8 April 21.

9 CHAIRMAN HOOD: April 21 at 6:30.
10 Thank you and have a safe trip home.

11 (Whereupon, at 10:46 p.m. the
12 public hearing was adjourned.)
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